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1731

AN

ESSAY

ON THE

POLITY OF ENGLAND:

WITH A VIEW TO

Discover the True PRINCIPLES of the GOVERNMENT,
what REMEDIES might be likely to cure
the GRIEVANCES complained of;

AND WHY

The several PROVISIONS made by the LEGISLATURE, and
those recommended by INDIVIDUALS, have failed.

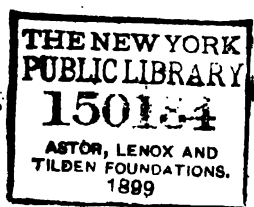
Ut in fidibus, ac tibiis, atque cantu ipso, ac vocibus concentus est quidam tenendus ex distinctis sonis, quem immutatum, ac discrepantem aures eruditæ ferre non possunt, isque concentus ex dissimillarum vocum moderatione concors tamen efficitur et congruens: sic ex *summis, et infimis, et mediis* interjectis ordinibus, ut sonis, moderatâ ratione civitas consensu dissimillarum confinit, et quæ harmonia à musicis dicitur in cantu, ea est in civitate concordia, artificissimum atque optimum omni in republica vinculum incolumitatis.

Cic. Frag. de Rep. lib. ii.

L O N D O N :

PRINTED FOR T. CADELL, IN THE STRAND.

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B O O K I.

Of the dangerous Tenets of some
Persons, who seem to wish for the
Annihilation of Monarchy.

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CHAP. II. Of the *Executive* Power: In
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- Page 4, in the margin, for *constitution*, read *government*.
 — 13, line 15, for *was*, read *were*.
 — 23, — 9, for *person and property*, read *person, prop-
 erty, and religion*.
 — 31, — 8, for *statutes mention*, read *statute mentions*.
 — 115, — 14, omit *that*.
 — 129, — 15, for *bad the*, read *possessed*.
 — 130, — 5, for *a single*, read *an*.
 — 172, — 16, 18 and 19, dele the parentheses, and the
 words *which is*, in two places.
 — 224, — 18, dele *a*, and insert *an* *indefeasible*.
 — 227, note (1), for *trebers*, read *frebers*.
 — 242, dele *note* (21).
 — 256, line 3, make the bracket before the word *and*.
 — 260, — 11, make the bracket after *indeed*.
 — 269, note (1), for *difference*, read *distinction*.
 — 279, — after *municipal*, insert *or civil*.
 — 281, — line penult. for *vol. iii.* read *p. 3.*
 — 285, note (10), for *feodal*, read *feodal*.
 — 289, line 11, for *effect*, read *affect*.
 — 296, — 4, for *became*, read *become*.
 — 307, note (16), for *were lately introduced openly*, read *seem
 to have been intended to be introduced*.
 — 387, line 6, omit *sufficiently*.
 — 399, — (5), for *and heard it*, read *at the time it is said
 to have been spoken*.
 — 422, at the beginning of the note, insert *A certain
 author, some years ago, wrote thus :*
 — 433, line 10, before *principles*, insert *nature and*.

AN
E S S A Y
ON THE
Constitutional Government
OF
E N G L A N D.

B O O K I.

Of the dangerous Tenets of some
Persons, who seem to wish for the
Annihilation of Monarchy.

C H A P. I.

INTRODUCTION.

WHILST *some* men, courting popularity, are talking, in general terms, of the *majesty*, and the *prerogatives* of the people; and *others*, more particular, claiming to be the peculiar favourites, and professing to be the *friends of the people*, are for exalting the power of the house of commons, by taking away the
B royal

royal negative(1); and publicly declare their approbation of the addition of an hundred members lately proposed to be made to the house of commons, *because it would increase the power of that house*: and, added to this, when men are so daring and absurd, as to wish for the *annihilation of monarchy*(2); and we are daily hearing an odious distinction made, of the *king's friends*, and the *friends of the people*; as if the king and the people had separate interests; it may not, perhaps, be unacceptable to an indulgent Public, to see the sentiments of a private individual, who, by no means presuming on any merit of style, but rather wishing, in that respect, to make some apology, is induced, with much distrust and diffidence, to offer a few plain thoughts upon a subject of great importance, as a *friend to the constitution*, that is, as he understands the constitution, as a *friend to both the king and the people*, the king and the kingdom.

(1) It is worthy of remark, that the very same doctrine was preached up by the Reformers, previous to the civil wars in the time of Charles I. CLAR. Hist. Rebell. fol. edit. B. v. p. 433. 452, 453. 473. 482. 491.

(2) See NOTE [A] at the end.

C H A P. II.

Of the Executive Power: in considering which, it will appear that the English Government, although it bears a monarchical Form, is, in reality, rather a Republic.

DISPUTES, such as these I have mentioned (generally fomented, perhaps, by the factious views of party), have in all ages, produced the greatest misfortunes. In ancient times, when the constitution was in its infancy, the nation was torn to pieces with contentions betwixt the king and the barons. Afterwards, the military genius of the feudal system having declined, and commerce introduced a new species of property (by which, in time, the baronies, or great part of them, were bartered away), we find a new power created in the house of commons; which, again, in its turn, became as dreadful as either of the others to the whole community.

Misfortunes arising from disputes between the king and the parliament.

LET us, then, enquire into the principles of the constitution; and endeavour to find

some means of avoiding, in future, the like calamities.

Definition of the constitution by Sir Will. Blackstone.

THE political writers of antiquity (1), Sir William Blackstone informs us, would not allow more than three regular forms of government; to wit, *monarchy*, *aristocracy*, and *democracy* (2). And there may yet be a few persons, who, like Tacitus (3), may treat the notion of a mixed government, formed out of them all, and partaking of the advantages of each, as a visionary whim, and one that, if effected, could never be lasting or secure.

‘ BUT, happily for us, we know that the British constitution has long remained, and,

(1) BLACK. Com. Introd. sect. 2. p. 49. 4to. 2d edit.

(2) MONTESQUIEU says, ‘ The three different species of government are, the *republican*, the *monarchical*, and the *despotic*; the *republican*, in which the body, or only a part of the people, is possessed of the supreme power; the *monarchical*, in which a single person governs by fixed and established laws; and the *despotic*, in which a single person, without law, and without rule, directs every thing by his own will and caprice.’ Sp. L. b. 2. c. 1.

(3) BLACK. Com. Introd. sect. 2. p. 50.

‘ I trust

Chap. II. GOVERNMENT OF ENGLAND.

‘ I trust will long continue, a standing ex-
‘ ception to the truth of this observation. For,
‘ as with us, the executive power of the
‘ laws is lodged in a *single person*, they have
‘ all the advantages of *strength and dispatch*,
‘ that are to be found in the most absolute
‘ *monarchy*; and, as the legislature of the
‘ kingdom is entrusted to three distinct
‘ powers, *intirely independent of each other*;
‘ first, the king; secondly, the lords spiritual
‘ and temporal, which is an *aristocratical* as-
‘ sembly of persons selected for their *piety*,
‘ their *birth*, their *wisdom*, their *valour*, or
‘ their *property*; and, thirdly, the house of
‘ commons, *freely chosen by the people from*
‘ *among themselves*, which makes it a kind of
‘ *democracy*; as this aggregate body, actuated
‘ by different springs, and attentive to dif-
‘ ferent interests, composes the British par-
‘ liament, and has the supreme disposal of
‘ every thing; there can no inconvenience
‘ be attempted by either of the three branches,
‘ but will be withstood by one of the other
‘ two; each branch being armed with a ne-
‘ gative power, sufficient to repel any inno-
‘ vation

‘ vation which it shall think inexpedient or
‘ dangerous,

‘ HERE, then, is lodged the *sovereignty* of
‘ the British constitution; and lodged as be-
‘ neficially as is possible for society. For in
‘ no other shape could we be so certain of
‘ finding the three great qualities of govern-
‘ ment so well and so happily united. If the
‘ supreme power were lodged in any one of
‘ the three branches separately, we must be
‘ exposed to the inconveniences of either ab-
‘ solute monarchy, aristocracy, or democracy;
‘ and so want two of the three principal
‘ ingredients of good polity, either *virtue*,
‘ *wisdom*, or *power*. If it were lodged in any
‘ two of the branches; for instance, in the
‘ king and house of lords, our laws might
‘ be providently made, and well executed;
‘ but *they might not always have the good of*
‘ *the people in view*: if lodged in the king
‘ and commons, *we should want that circum-*
‘ *spection and mediatory caution, which the*
‘ *WISDOM of the peers is to afford*: if the su-
‘ preme rights of legislature were lodged in
‘ the

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' the two houses only, and the king had *no*
' *negative* upon their proceedings, *they might*
' *be tempted to encroach upon the royal prerogative,*
' *or, perhaps, to abolish the kingly*
' *office, and thereby weaken (if not totally de-*
' *stroy) the strength of the executive power.*
' But the constitutional government of this
' island is so admirably tempered and com-
' pounded, that nothing can endanger or
' hurt it, but *destroying the equilibrium of*
' *power between one branch of the legislature*
' *and the rest*; for if ever it should happen,
' that the *independence of any one of the three*
' *should be lost, or that it should become subser-*
' *vient to the views of either of the other two,*
' *there would soon be an end of our consti-*
' *tution* (4).'

By a careful observer I believe it will be found, that the house of commons, the democratical part of the constitution, is, agreeably to the notion of republicans, the great wheel that moves the vast machine of go-

In the house of commons the laws for securing private rights, and the measures for the public good, originate.

(4) BLACK. Com. Introd. sect. 2. p. 51.

vernment. With that house all laws for securing the *private rights of individuals*, are permitted to originate. With them the *political interests of the nation at large* may be said to be intrusted; for, having the power of granting the supplies, they can prevent any measure they may judge hurtful to the community from being carried into action; and, when begun, from being further prosecuted.

The execution intrusted to the monarch.

BUT, although the laws for securing the *private rights of individuals*, are allowed to originate in the house of commons, yet it is not permitted to the house to interfere in the least with their execution. That power, under proper limitations, is intrusted to the monarch (5).

AND, with respect to the *political interests of the nation*, although the house of commons have a right to judge of their expediency, before they grant the supplies, yet it would be highly improper that they should interfere

(5) This is what is distinguished by Montesquieu, as the executive power, in *civil* affairs. Sp. L. b. ii. c. 19.

with

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with the application of the money *after* it is granted. The execution of the measures for which it is designed, is therefore *de jure*, whatever it may be *de facto*, intrusted to the monarch; or rather, perhaps, to such men as he chooses to appoint to be his ministers, assisted by the advice of such distinguished personages as his majesty, and not the house of commons, may call to his council (6).

If the house of commons had any the smallest prospect of advantage to themselves from granting the supplies, they might be too heedless in granting them. The executive power must be lodged somewhere; and it was thought there would be less danger of profusion in one person than in a multitude. If the power had been in the house of commons, it would have created nothing but contention. The public good would have yielded to private interest. But, besides, both in the application of the money which is granted, and in various other instances, unanimity, uni-

Reasons for
it.

(6) This may be distinguished as the executive power, in *political* matters.

formity,

formity, secrecy, decision, and strength or vigour in the execution, might often be indispensably and *absolutely* (7) necessary; and these would strike with most force, like a bullet, when united in one person. And as the great political interests of the nation, in making and carrying on war, forming alliances, entering into treaties, making peace, and several other matters, could not, like the private rights of individuals, be bound by written laws, but must depend upon contingencies and events intirely uncertain, and might often require instant dispatch; it seems to be a matter of necessity, that this power should be, in a great degree, discretionary and absolute; it was, therefore, most peculiarly fitted for monarchy.

(7) Sir W. BLACKSTONE lays it down as a principle, that, *in the exertion of lawful prerogative*, the king has *quoad hoc* sovereign power, and is and ought to be absolute; that is, so far *absolute*, that there is no legal authority that can either delay, or resist him. Com. b. i. c. 7. p. 250. 257. where he very properly distinguishes between that *absolute power*, which is vested in the prince; and that *national resistance*, which may, possibly, be justifiable in the people.

BUT

BUT though the king in council is intrusted with the administration of the measures to be pursued for securing the *political interest of the nation*; yet the only power almost which he exercises, is the appointing ministers of state, and naval and military commanders, who are charged with the actual execution of those measures.

AND though the administration of the laws for securing the *private rights of individuals*, may be also said to be intrusted to the king in council; yet he can interfere no otherwise in their execution, than by appointing judges or ministers of justice,

THAT the judges may be totally uninfluenced by the power which appoints them, they are enabled to hold their places, not during pleasure, but so long as they shall *well behave themselves*,

THAT there may be no failure in the execution, either of the laws *for securing the private rights of individuals*, or the measures *for securing the political interests of the*

Subject to the revision of the commons.

the kingdom, the house of commons enjoy the privilege of impeaching all the great ministers, political, civil, and military.

AND, that it may not be in the power of the crown to screen the offenders, the king is not permitted to pardon them.

AND, as a still further security of the civil and political interests of the community, the trial by jury, and the liberty of the press, have vested in the society at large the judicial and censorial powers.

So that primarily, ultimately, and substantially, the great efficient powers of the state, legislative, inquisitorial, judicial, and censorial, may be said to be principally intrusted with the people. What would the most zealous republican have more?

Yet the monarch
thought to
possess sovereign
power.

YET a notion prevails, that the crown enjoys the sole power of actual government. In general, the crown and the government mean the same thing. The sovereign, as the king is called, though only executing the measures dictated

dictated by the legislature (the supreme authority), is charged with being the author of them. He alone was blamed by some for the late contest with the colonies, at present the states of America; although, notwithstanding what has been said to the contrary, it is plain, that, at first, the war was as agreeable to a majority, amounting nearly to an unanimity, of the parliament, and of the people also, as to the crown. When the event turned out unsuccessfully, the crown again bore the obloquy; although the ill success of our arms might, perhaps, with as equal justice, have been attributed to a factious opposition and obstruction, which, in time, was produced to the executive authority in parliament, as to any misconduct in the executive authority itself.

“ UNDER every monarchical establishment, it may be necessary to distinguish the prince from his subjects, not only by the outward pomp and decorations of majesty, but also by ascribing to him certain qualities, as inherent in his royal capacity, distinct from, and superior to, those of any

Erroneous ideas of the words *sovereign* and *government*.

other individual in the nation. For, though a philosophical mind will consider the royal person merely as one man, appointed by mutual consent to preside over many others, and will pay him that reverence and duty which the principles of society demand; yet the mass of mankind will be apt to grow insolent and refractory, if taught to consider their prince as a man of no greater perfection than themselves. The law, therefore, ascribes to the king, in his high political character, not only large powers and emoluments, which form his prerogative and revenue, but likewise certain attributes of a great and transcendent nature; by which the people are led to consider him in the light of a superior being, and to pay him that awful respect, which may enable him, with greater ease, to carry on the business of the government (8)."

IN a word, in England, the king is called *sovereign*; yet, in truth, the real (9), supreme,

(8) BLACK. Com. b. i. c. 7. p. 241.

(9) Ib. Introd. sect. 2. p. 49.

irresistible,

irresistible, absolute, uncontrollable authority, in which the *jura summi imperii*, or the rights of sovereignty reside, is vested, not in the monarch only, but in the king, lords, and commons united; in other words, in the legislature. The king is, in fact, little more than the great ADMINISTRATOR of *the government*, or EXECUTIVE power: it may, therefore, perhaps justly be questioned, whether the appellation of *sovereign* hath, in reality, produced that respect which was intended; or, by attributing to him the *sole* power of *government*, it hath not rather lessened the esteem for his authority; and by directing the people, of late years, in their search for a redress of grievances, to a wrong object, it hath not contributed to the increase of our misfortunes, rather than afforded the means of redress.

The king the great administrator of the government, or executive, not sovereign, power.

C H A P. III.

Origin of the Constitution.

Constitution
originated in
the feudal
law.

PERHAPS few subjects of inquiry have more engaged the writings and the passions of men in Great Britain, than those which regard the constitution. But while some have directed their inquiries only to exalt the power of the crown, and others only to exalt that of the commons, few have tried the justness of their notions by the only object which could throw light on the question, or indeed on almost any question where it is necessary to trace to its source the history of an ancient law or constitution, and bestow certainty upon their conclusions: The object I mean, is the feudal plan of government (1).

(1) DALRYMP. Essay towards a General Hist. of Feod. Prop. 257. The feudal law formerly prevailed in so many countries in Europe, that Spelman (on Parliaments, p. 57.) calls it the law of nations in our western orb. BLACK. Com. Introd. 36.

WHEN

Chap. IV. GOVERNMENT OF ENGLAND.

WHEN William, the Norman, conquered this country, it is natural to suppose he would establish, or at least more strongly confirm (2), that system of government with which he was best acquainted. And, at a time when no right was submitted to but that of the strongest, perhaps no system of government could well be conceived more suitable, than a military subordination.

CHAP. IV.

Of the Judicial Power.

BUT however well adapted an absolute, undisputed authority, in one person, might be to military concerns, it was, in civil and political affairs, found to be a dangerous principle.

Feodal law defective as a rule of *civil* polity.

As a rule of *civil* polity, the feodal system was certainly very defective. It was, perhaps, a natural idea at the first, that the king should be the common arbiter, as it were, be-

Rise and progress of the *judicial* authority.

(2) See NOTE [B].

*Judicial
power sepa-
rated from
the executive.*

tween his subjects ; and that the same power which decided a dispute, should also enforce the determination : but in time it was discovered, that when the *executive* magistrate was also the *judge*, it was easy to convert that which was meant for the protection of the people into an instrument of oppression. It was an injury to the *subject* (1), that the judge should be at the same time the party prosecuting, and have the benefit of the confiscations. It was an injury to the *sovereign* (2), who must either have the ridiculous power of making and unmaking his own decisions, or be deprived of the most glorious attribute of sovereignty, that of granting pardons.

*Aula regis
abolished,
and temp.
Hen. II. juries
revived.*

THE dangers of the *aula regis* (3) were, therefore, gradually seen into ; and in the reign of Henry II. the ancient mode of trial

(1) Sp. L. b. vi. c. 5.

(2) Ibid.

(3) This single court, which, in the time of the Conqueror, used to sit in the hall of his own palace, executed that business which is at present divided among the four courts, of chancery, king's bench, common pleas, and exchequer. DALRYMP. Hist. Feod. Prop. 229.

by *jury*, which had been practised by the *Saxons*, was revived.

By *Magna Charta*, granted by king John, and renewed by his son Henry III. (which last is the first act of parliament that appears in RUFFHEAD's Collection of the Statutes), this privilege of a trial by jury was more strongly confirmed. And, in order that the suitors might be no longer harassed with following the king's person in all his progresses, the court of common pleas was fixed at Westminster, assizes were directed to be taken in their proper counties, and annual circuits were established.

Magna charta
granted by
king John.

THIS *charter*, or writing, as confirmed by king Edward I., contains thirty-seven short articles, acts, or chapters; redressing many grievances incident to feudal tenures, of no small moment at the time; though now, unless considered attentively, and with this retrospect, they seem but of trifling concern (4).

(4) BLACK. Com. b. iv. c. 33. p. 416. See NOTE [C].

Great, nevertheless, it certainly was ; for, though it contains only ten quarto pages (5), and those, at that time, all the *written* law of the land (6) ; yet, to rescue the judicial power out of the hands of the executive, by declaring it to be law, as it does in cap. 29.

‘ That no freeman [*nullus liber homo*] shall be
 ‘ taken, or imprisoned, or be disseised of his
 ‘ freehold, or liberties, or free customs, or be
 ‘ outlawed, or exiled, or any otherwise de-
 ‘ stroyed, but by *lawful judgment of his peers*
 ‘ [*parium, or equals* (7)], or by the law of the
 ‘ land (8) ;’ and that justice should not be
 sold (9), denied, or deferred ; which, in just

(5) See Collection of the Statutes, by OWEN RUFF-HEAD.

(6) From this circumstance, one would almost imagine, that the crown formerly enjoyed despotic power ; for in absolute governments, the laws are always few and simple. ‘ Hence it is, that when a person renders himself absolute (witness Cæsar, Cromwell, the king of P.—a, and many others), he immediately thinks of ‘ simplifying the laws.’ Sp. L. b. vi. c. 2.

(7) See NOTE [D].

(8) See NOTE [E].

(9) See NOTE [F].

so many words, holding out a protection for the essential rights of the subject, that is, for the safety and liberty of their *persons*, and the security of their *property*, was no small advance from arbitrary power; and therefore deserving of the highest encomium from our ancestors. And, considering the slavish nature of the *fruits* incident to the military tenures, which the great charter took away, or, at least, greatly moderated, it well deserved to be called a Charter of *Liberty*. We cannot, therefore, wonder that our forefathers were attached to it to a degree of adoration; to find that they caused it to be read twice a year in all cathedrals; and, as Sir EDWARD COKE informs us (10), to be confirmed no less than thirty-two times (11). But liberty was a plant of a slow growth. In upwards of an hundred and forty years, *viz.* from the time of the conquest to the great

(10) 2 Inst. Proem.

(11) RUFFHEAD, in his Preface to the Statutes, p. 19. says, 'The great charter was confirmed more than thirty times.'

charter of Henry III., it had only advanced to such a growth as to fill, as we have observed, ten pages in our Statute Book. From that time, to the end of the reign of queen Elizabeth, all our written law was comprised in two volumes in quarto. But from the beginning of the race of the Stuarts (despotic as they were thought to be) to the present time, the Statute Book has been augmented with eleven more volumes in quarto, exclusive of the statutes for the three last years (12).

Edw. I. gave up the prerogative of interfering in private causes.

IN the reign of Edward I. (13), the king gave up the royal prerogative of sending mandates to interfere in private causes (14).

Cha. I. granted the petition of right, abolished martial law,

By the petition of right in the time of Charles I. (15), and the abolishing in his reign, besides martial law, the court of high com-

(12) See NOTE [G].

(13) BLACK. Com. b. iv. c. 33. p. 419.

(14) Confirmed by 2 Edw. III. c. 8. 5 Edw. III. c. 9.
14 Edw. III. ft. 1. c. 14. 25 Edw. III. ft. 5. c. 4.
28 Edw. III. c. 3. 42 Edw. III. c. 3. 11 Rich. II. c. 10.
16 Cha. I. c. 10. and 1 W. and M. ft. 2. c. 2.

(15) 3 Cha. I.

mission

mission (which, as a judicature (16) for the trial of ecclesiastical causes, conferred on the king an absolute power in the *church*); and the court of star-chamber (which, allowing in civil causes the king's proclamations to have the force of laws, bestowed upon the monarch the like absolute authority in the *state*), the power of the king and privy council, over the person and property of the subject, was further restrained.

and the courts of high commission and star chamber.

CHARLES II., in the *habeas corpus* act (17), effectually guarded the person of every man from arbitrary imprisonment, though committed even by the king in council.

Ch. II. granted the *habeas corpus* act.

THE act appointing the coronation oath, which affords now an evidence of an express contract of the prince with his people (18), the bill of rights (19), which, by pronoun-

Temp. W. III. coronation oath appointed, bill of rights passed, with act of settlement,

(16) 16 Cha. I. c. 10. Anno 1640.

(17) 31 Cha. II. c. 2. Anno 1679.

(18) 1 W. & M. sess. 1. c. 6.

(19) 1 W. & M. sess. 2. c. 2.

and act for making judges more independent, and to prevent the king's pardon being pleaded to parliamentary impeachments,

cing the dispensing power to be illegal, hath maintained the superiority of the laws above the king; and the act of settlement (20), all obtained soon after the Revolution, have more exactly limited the boundaries of the prerogative, and ascertained the supremacy of the law.

THE judges holding their offices (no longer *durante bene placito*, but) *quamdiu se bene gesserint* (21); and having had competent salaries irrevocably fixed upon them (22), the administration of impartial justice is still more effectually secured.

AND, lastly, to prevent any malversation in their offices, the judges are made subject to impeachment in parliament; a judgment upon which is of so high authority, and thought so necessary to be removed from any power of the crown, that it is not subject to the royal pardon (23).

(20) 12 & 13 W. III. c. 2. s. 3.

(21) Ibid.

(22) 32 Geo. II. c. 35. and 1 Geo. III. c. 23.

(23) 12 & 13 Will. III. c. 2. s. 3.

C H A P. V.

Of the Legislative Power,

BUT if the feudal system was defective, as a system of *civil* liberty, it was, perhaps, no less defective as a system of *political* liberty.

Feodal system ill-calculated to procure *political* liberty.

IF considered as a military establishment under the absolute sway of one great commander, it is not likely that men invested with sovereign-like authority within their own districts, would easily submit to be commanded. If looked upon as an oligarchy, where many were confessedly more upon a level, it must naturally beget a competition, and that competition a contention for power, equally fatal to liberty. Hence those bloody wars betwixt the king and the barons in the times succeeding the Norman conquest; when, *quacunque via*, the nation seems to have had no other alternative than tyranny, monarchical or aristocratical,

I KNOW

The rise and
progress of
the legislative
power.

I KNOW it is said, that, by the feudal constitution as established by the Normans, the barons sat with the king in parliament; and as there is, perhaps, no maxim (1) in politics more generally true, than that power will follow property; and as the Saxons had their *micel-snoth*, or great council, *micel-gemote*, or great meeting, *wittena-gemote*, or meeting of wise men; so it is natural to suppose, that the Norman chieftains, who became the principal proprietors of the kingdom; and who, in the countries from which they originally came, were so little inferior to the prince, as to be called his *comites*, that is, his companions, should also, on all arduous occasions, be called to the king's council, or, as many ancient writers term it, *colloquium*. It was surely a great sanction to the laws, especially those which were to impose taxes on the people, and was well calculated to secure obedience, to have them made with their own concurrence. And we are accordingly told, that in Edward the III^d's time, an act of

(1) DALRYMP. Hist. Feod. Prop. 134.

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47

parliament made in the reign of William the Conqueror, was pleaded in the case of the abbey of St. Edmundsbury (2), and judicially allowed by the court. Nevertheless, the same feudal or military principle of submission to one commander, which appears to have governed in the judicative department immediately after the conquest, seems to have extended itself greatly into the legislative also. It is true, that the great charter (3) of king John (4), promised, that *no scutage or aid should be imposed, except by the common council; and that to have a common council* he would summon all *archbishops, bishops, abbots, earls (comites, or counts, from whence counties),*

(2) BLACK. Com. b. i. c. 2. p. 149. Year Book 21 Edw. III. 60. RAPIN tells us, in his 2 Hist. Eng. Dissert. Ang. Sax. Gov. 179. 8vo. edit. that there is in the office of the king's remembrancer of the exchequer, a charter of *Canute the Great* to the *abbey of St. Edmundsbury*, in these words: *I Canute king of the whole island of Albion, and many other nations, by the advice and decree of the archbishops, bishops, abbots, earls, and all my other faithful subjects, have ordained, &c.*

(3) Cap. 14. anno 1215.

(4) BLACK. Com. b. i. c. 2. p. 149.

and

and greater barons personally (*sigillatim per literas regis*), and all other tenants in chief (*omnes illos qui de nobis tenent in capite*), by the sheriffs (*vice-comites*), and bailiffs. Yet it is to be observed, that the common council, or parliament, thus granted, was to consist only of archbishops, bishops, abbots, earls, the greater barons, and tenants *in capite*; and that the business they were to be permitted to transact was to be only that of *assessing aids and scutages* (5); any right of participating in *making laws*, being as yet never entertained by them, even in idea. On the contrary, we are told, that members of parliament, so late as the days of queen Elizabeth, 'were conceived in no other light than as a means of obtaining supplies (6). Queen Elizabeth made a merit to her people of seldom summoning parliaments (7). No redress of grievances was expected from

(5) BLACK. Com. b. i. c. 2. p. 149. and b. ii. c. 5. p. 74. See NOTE [H].

(6) HUME's Hist. Eng. Vol. v. App. 475.

(7) 4 Strype, 124.

‘ these assemblies: they were supposed to
 ‘ meet for no other purpose than to *impose*
 ‘ *taxes* (8).’ If we may judge from the
 statutes, as collected by RUFFHEAD, the *mak-*
ing of laws, in ancient times, engaged very
 little of the attention of parliament. The great
 charter of 9 Hen. III. with which the col-
 lection of the Statutes begins, sets forth, that
 ‘ the king, of his mere and free will, gave
 ‘ and granted,’ &c. Some other succeed-
 ing Statutes begin thus: ‘ The king un-
 ‘ to his justices of the bench (9).’ ‘ The
 ‘ king to all to whom these presents shall
 ‘ come (9).’ ‘ The king commandeth (11).’
 ‘ It is provided by our lord the king and his
 ‘ justices [judges],’ &c. (12). But admit-
 ting the *fact*, that the first Norman princes
 were perfectly absolute, as perhaps they were,
 yet surely few persons will be found absurd

(8) HUME's Hist. Eng. vol. v. App. 475.

(9) 21 Hen. III.

(10) 51 Hen. III. stat. 1.

(11) 51 Hen. III. stat. 5.

(12) 10 Edw. II.

enough to contend for their *right* to be so. It was the great misfortune of Charles the First, that this was the doctrine of his reign. No wonder then, that 'endeavours to uphold
' a tottering throne by such false supports,
' should entirely overthrow it (13);' suffice it to observe, that from the earliest period of history, however disputed, 'all matters of importance were debated and settled in the
' great councils of the nation (14).' And as it was found incompatible to vest a power of *enacting* and *expounding* the laws in one person, so it was manifestly found as inconsistent, that one person should have the sole power of *making* laws, and *enforcing* the execution of the judicial decisions. . If different tenets were held under the tyrannical government of the Normans, not only king John promised to summon all his tenants in chief to assess aids and scutages, but Henry III., though he omitted this particular clause in

(13) HURD'S Mor. and Pol. Dial. 299.

(14) BLACK. Com. b. i. c. 2. p. 147.

cu

his charter, stipulated, 'That scutages should
' be taken as they were used to be in the
' time of king Henry II. (15), and in the forty-
ninth (16) year of his reign, he issued writs (the
(17) first upon record), *to summon knights of
the shires* to parliament; and, at the same time,
the *cities and boroughs were written to*, and
required to send members (18). The statutes
of 52 Henry III. mention 'the king's calling
' together the more discreet men of the realm,
' as well of the *higher* as of the *lower* estate.'
In the statute of 3 Edw. I. the great council of
the nation is called 'a parliament;' and the
statute is expressed to be made by the assent of
' the archbishops, bishops, abbots, priors,

(15) 9 Hen. III. c. 37. BLACK. Com. b. i. c. 8.
p. 310. Ib. b. ii. c. 5. p. 74.

(16) BLACK. Com. b. i. c. 2. p. 149.

(17) BLACK. Com. b. iv. c. 33. p. 418. and RUFF-
HEAD's Pref. to Stat. at Large, fo. 10. sed vide 3 Lord
LYTT. Hist. Hen. II. 221. where he cites a writ of
summons, directed to the Sheriffs of Bedfordshire and
Buckinghamshire, requiring two knights to be sent for
each of those counties, in the 38 Hen. III.

(18) RUFFHEAD's Pref. to Stat. at Large, 10.

' earls,

‘ earls, barons, and all the *commonalty* of
 ‘ the realm.’ And at this day, though all
 acts of parliament are expressed to be made
 by the *king*, yet it is *by and with the advice*
and consent of the lords spiritual and temporal,
in parliament assembled; that is to say, *by the*
advice of the great men, the *thanes*, the
procures, *optimates*, *magnates*, *barones regni*,
 the ancient hereditary great council of the
 kingdom, and with *the consent* (19) of the
 commons, or more common people, expressed
 by their representatives *pro tempore*; and mo-
 dern times have added; *by the authority of the*
same (20); so that now, to the validity of all
 acts of parliaments, the assent of the lords and
 commons is as necessary as that of the king
 himself.

BUT as it may, perhaps, give greater fa-
 tisfaction to see what hath been the rise of
 the upper and lower house of parliament, I

(19) See NOTE [I].

(20) It is said this expression was first made use of in
 the 11 Hen. VI.

shall

shall endeavour to give a short account of their progress, and to take a chronological view of the powers which have been successively assumed by the latter.

I WILL take for granted, what is generally The barons imagined, that the barons, and such as held *in capite* of the crown by knight-service (the number of whom, towards the end of the conqueror's reign, was about seven hundred), were intitled to be of the king's *council*, or, as it was afterwards called, *parliament*. Under the barons was an infinite number of men of a slavish condition, called *servi*, *villani*, *bordarii*, and very few socage (21) tenants of poor and trifling possessions (22).

(21) The feudal notion in time became so strict, that all the lands in the kingdom were supposed to be holden immediately, or mediately, of the king. According to Sir EDWARD COKE, we had not properly *allodium*; that is, land of a subject that was not holden of a superior. 1 Inst. I. BLACK. Com. b. i. c. 16. p. 367. and b. ii. c. 5. p. 60. ST. AMAND. 26, 27. 2 RAP. Hist. Eng. Dissert. Ang. Sax. Gov. 196. note. 8vo edit. STUART'S View of Soc. 106. MADOX, Bar. Ang. p. 30. Dr. SQUIRE on the Anglo-Sax. Gov. 108.

(22) DALRYMP. Feod. Prop. 262.

D

But

But for these, it was perfectly in the genius of the feudal, that is, military constitutions, to have little regard (23). Arms only were deemed honourable (24); and, as every other occupation would of course be accounted base and ignoble, it is not to be wondered, that such a difference was made between the condition of *prædial* and *military* tenures.

‘ HOWEVER, a policy that excluded such numbers from the rank and privileges of citizens, was so far a defective one. And this defect would become more sensible every day, in proportion to the growth of arts, the augmentation of commerce, and the security the nation found itself in from foreign dangers. The ancient military establishment would now be thought unjust, when the exclusive privileges of the swordsmen were no longer supported by the necessities of the public, and the wealth of the nation made so great

(23) HURD'S Mor. and Pol. Dial. 209.

(24) Ib. 209.

a part of the force of it. Hence arose an important change in the legislature of the kingdom, which was much enlarged beyond its former limits.' But this was done by degrees.

' FIRST, the number of tenants in chief, or the king's freeholders, was much increased by various causes, but chiefly by the alienation which the greater barons were permitted to make of their fees. Such alienation could not be made without consent of the prince : but his consent became necessary, or was obtained, at least, on some extraordinary occasions. Thus, when the fashionable madness of the croisades had involved the greater barons in immense debts, in order to discharge the expences of these expeditions, they were allowed, in Henry the Second's reign, to alienate their possessions. The consequence was, that the lesser military tenants multiplied exceedingly. And as each military tenant *in capite* was intitled to a seat in the great council, or parliament ; and many of them

Knights of
the shires.

were poor, and unequal to a personal attendance, it was found convenient to give leave to the inferior tenants *in capite*, to appear in the way of *representation*. And this was the origin of what we now call THE KNIGHTS OF THE SHIRES (the owners of knights fees(25),) who, in those times, were appointed to represent, not all the freeholders of counties, but the lesser tenants of the *crown* only. For these not attending in person, nor having any lord paramount to speak for them, would otherwise have had no place in the king's council (26).'

Citizens and
burgesses.

THE rise of citizens (27) and burgesses (28), that is, representatives of the cities and trad-

(25) See 1 Edw. II. ft. 1.

(26) See NOTE [K].

(27) HURD's Mor. and Polit. Dial. 210.

(28) Lord LYTTLETON says, Writs for the election of citizens and burgesses were not originally sent to sheriffs, but directly to the cities and boroughs (3 Lord LYTT. Hist. Hen. II. 412.) The first regular summons we meet with, directed to the *Sheriff*, for the election of *citizens and burgesses*, is in the 23d of Edw. I. RUFFHEAD's Pref. to Stat. at Large, 10. 3 Lord LYTT. Hist. Hen. II. 231.

ing towns, must be accounted for somewhat differently.

‘ In the Saxon times, the inhabitants of the towns, or the burgwaren, were in the lowest condition ; yet, for the benefit of trade, they had formed themselves into communities and gilds : though in a manner the property of others, and subject to the officers and magistrates of those in whose dominion they were, yet with respect to each other in matters of trade, they were allowed to have their own laws and police. As the Normans were further advanced in the arts of life, than the Saxons had been, the inhabitants of the towns grew in some estimation soon after the conquest : the Norman kings and lords bestowed upon those communities and gilds which they found erected for the benefit of their members only as traders, the privileges of men and of freemen : they enfranchised the inhabitants ; to the communities, by way of appanage, they gave territories in perpetuity ; they farmed to them their own census

and taxes; they withdrew the officers, who, in right of the king or the lords, had governed the town, or collected its taxes; and allowed the inhabitants courts, and officers and magistrates of their own. The charter of enfranchisement of Great Yarmouth, by King John, points out most of these alterations; and relates (29) *Quod progenitores domini regis tenuerunt, predictum burgum, in manibus suis propriis, percipiendo omnia proficua inde exeuntia, de portu, usque ad tempus Joannis regis qui concessit villam, burgenfibus villæ, ad feodi firmam.* The gift of the territory in perpetuity, and the feofarm of the census and taxes in perpetuity, constituted a fief, not in the particular members of the community, but in the community itself in general. This fief was said to hold by a tenure from the subject of it, called burgage (30); the community represented by the governing part of the borough was the vassal; and when,

(29) BRADY. Bur. Append.

(30) BLACK, Com. b. ii. c. 5. p. 82.

either by the original right of the king, or by a right derived to the king from a lord, the king was superior in this fief, that governing part was the immediate vassal of the crown; and if the members of it observed the feudal principles and orders, they owed attendance in parliament, not as barons, but as vassals to the crown; and if not in person, from the inconveniency of their too numerous appearance, yet by representatives elected by themselves (31).’ And possibly it was the representation of burghesses, that paved the way for a representation of the other inferior tenants *in capite*, by knights of the shire (32).

It is true, that this privilege of the commons, which in time procured for the people, by their representatives, the power of proposing and making, or at least of proposing and

The right of representation at first lightly esteemed.

(31) DAL. Feud. Prop. 263.

(32) Ib. 266. 2 RAP. Hist. Eng. Dissert. Ang. Sax. Gov. 176. 8vo edit.

consenting to, or dissenting from, those laws, by which they were afterwards to be governed, at the first was but lightly esteemed. At that time (33), a seat in parliament was not the road to honour and preferment; and it was found necessary for the sheriff, even to demand sureties of the members to appear and perform the services required of them (34). Barons denied their tenures (35), boroughs denied their title (36), and sheriffs returned, that in whole counties they could not get a burgess to send up (37). From the first in-

(33) HUME's Hist. of Eng. vol. vi. p. 563. note.

(34) SQUIRE on the Anglo-Sax. Gov. 301.

(35) DALRYMP. Essay towards a Gen. Hist. of Feod. Prop. c. 8. p. 266.

(36) Patents of exemption were antiently granted to particular persons and boroughs. PRYNNE's Animad. on 4 Inst. p. 32. and MADDOX's MSS. in the British Museum, No. 13. tit. PARL.

(37) No mention is made of knights or burgesses in the 23 Edw. I. m. 8. dorso; nor in the 27 Edw. I. m. 17. dorso. We find the like omission in several other instances. In one summons of the 23d Edw. I. the barons only are mentioned. See likewise the Commons Petition, 13 Edw. III. Cotton's Abridgm. n. 23. Also 5 Rich. II. stat. 2. c. 4.

roduction

roduction (38) (at least as far as it is known) of citizens and burgesſes into parliament, *viz.* from the 49 Hen. III. to the 22 Edw. IV. that is, upwards of two hundred and eighteen years, ſo little was the diſtinction or honour of being a repreſentative ſought for, that in all that time there were only two or three inſtances (39) of controverted elections. Towns frequently ſaw with indifference the privilege taken from them by their ſovereign, and given to others. Royal mandates iſſued to the ſheriff to return (40) *particular perſons*. The borough members in a county were choſen, along with the knights of the ſhire, at the county-court, and returned by one and the ſame indenture (41). PRYNNE (42), and the Author of Legislative Rights, &c. (43), produce authorities to prove, not only that formerly the *kings of England*, at their arbitrary pleaſure, nominated *what boroughs* ſhould

(38) See Note (17), p. 31.

(39) PRYNNE, Brevia Parl. rediv. 137.

(40) Lord BOLINGBROKE's Diſſert. on Parties, 159.

(41) BRADY on Boroughs, 158.

(42) Brev. Parl. red. 175.

(43) 2 Edit. p. 101. III. 112. 114.

send members to parliament (44), and *who the members should be* (45); but that even the sheriffs did the same (46). One authority (47) goes so far as to shew that Edw. III. *named all the deputies*. And the Author of *Legislative Rights*, &c. himself admits, that not only our kings, formerly, called up *whom they pleased* [from the boroughs], but that *they discontinued*, as occasion served, the *calling up of others*, and sometimes allowed even *counties* a representation in parliament, and sometimes *not*. Instead of giving a great price for a seat in parliament, as is now the constant practice, of so small a value was the privilege formerly estimated by the persons elected, that they received wages for their attendance (48). And the electors, so

(44) Part ii. of a Brief Register, 172.

(45) Ib. 64. See LL. 45 Edw. 3. m. 2. dorf.

(46) Brev. Parl. red. 231. 234.

(47) BRADY'S Answ. to PETYT, 161.

(48) The barons, as serving for the tenants of their baronies, were exempt from contributing to those wages. RAP. Hist. of Eng. vol. ii. Dissert. Anglo-Sax. Gov. p. 176. 8vo edit. And tenants in ancient demesne also claimed a like exemption. Lord LYT. Hist. Hen. II. vol. iii. p. 225.

far from coveting the right of election, knowing that any act which might affect their own particular rights, must equally affect the whole kingdom, looked upon it as a burden to pay wages for what they deemed no advantage, and petitioned to be relieved from it (49). The members of the house of commons were prosecuted by indictment in the King's Bench, for departing from parliament without leave from the crown (50). The corporate bodies in some towns, perhaps, sometimes, because they paid the wages, assembled together, without ever consulting the commonalty, and returned whom they pleased (51); and hence, perhaps, in some in-

(49) SQUIRE on the Anglo-Sax. Gov. 321.

(50) Thirty-nine members were indicted for this offence in the reign of Philip and Mary. Nor was this at all wonderful, when it is considered, that members of parliament were formerly reckoned the crown's own men; and therefore not liable to be called to account before any other than the king's court. SQUIRE on the Anglo-Sax. Gov. 317. 351.

(51) This was actually the case at Hull (and, I doubt not, at many other places) formerly, though it is very different at present.

stances,

stances, may have arisen the privilege of returning members by *corporations*, or *select bodies*; whilst the principal burghers in other places, possibly often for a similar reason, may have laid the foundation of *burgage tenures*, and of the right of election, by *paying scot and lot*; privileges which, however sanctioned by time, as private property, seem frequently to have been acquired by the dismemberment of the public.

C H A P. VI.

The Rise and Progress of that Power which has been acquired by the House of Commons.

THE commons, however, were not wholly insensible of the importance of the situation they had gained: and as the *magna charta* of King John had promised that ‘no scutage or aid should be imposed, except

Magna charta, temp. K. John.

‘ except by the *common council* of the king-
 ‘ dom, but for redeeming the king’s person,
 ‘ for making his eldest son a knight, and for
 ‘ once marrying his eldest daughter ;’ and
 that, ‘ *to have a common council* of the king-
 ‘ dom, to assess an aid, otherwise than in
 ‘ the three aforesaid cases, or to assess a scut-
 ‘ age, he would cause to be summoned the
 ‘ *archbishops, bishops, abbots, earls, and greater*
 ‘ *barons*, personally, by his letters ; and, be-
 ‘ sides, would cause to be summoned, in ge-
 ‘ neral, by his sheriffs and bailiffs, *all those*
 ‘ *who held of him in chief* (1) :’ so afterwards,
 the *citizens, burghesses, and tenants in ancient*
demesne, who, for a while consulted together,
 separately and apart from the greater barons,
 and *knights of the shires* (2), thought that the

(1) *Magna charta* of King John, c. 12. 14. Law
 Tracts, vol. ii. HENRY’S Hist. Gr. Brit. b. iii. c. 3.
 f. 2. p. 369. 616.

(2) It appears from the record transcribed by BRADY,
 Append. No. 12, 13. that the *citizens, burghesses, and*
tenants in ancient demesne, consulted together, and apart
 from the prelates, earls, barons, and *knights of the shires*,
 in the 34 Edw. I.

aids and scutages should have *their* consent, as well as that of those barons and knights : accordingly the statute of 25 Edw. I. c. 6. ordained, that ‘ no manner of aids, tasks, nor ‘ prizes should be taken but by the *common* ‘ assent of the realm, and for the common ‘ profit thereof,’ saving the ancient aids and prizes then due and accustomed (3) ; and the statute *de tallagio non concedendo*, 34 Edw. I. stat. 4. c. 1. (4) enacted, that ‘ no tallage ‘ or aid should be taken or levied without ‘ the good-will and assent of the archbishops, ‘ bishops, earls, barons, *knights, burgessees*, and ‘ other *freemen* of the land.’

Statute *de*
tallagio non
concedendo,
temp. Edw. I.

So that *magna charta*, mitigating the rigour of the feudal law, not only laid the foundation of *civil* liberty, in an excellent judicature ; but, in conjunction with the stat. of 25 Edw. I. c. 6. and 34 Edw. I. st. 4. c. 1.

(3) The ordinary aids which had been long accustomed, were the three for making the king's eldest son a knight, marrying his eldest daughter, and redeeming his person from captivity.

(4) See also the statutes of 25 Edw. I. c. 5. & 6. and 14 Edw. III. st. 2. c. 1.

may

may be said to have also laid the foundation of *political* liberty, in an excellent legislature.

‘ It has been said by some, that the privilege of sitting in parliament was given to *knights of the shires* in England, by Simon de Montfort, to secure him in his power. It has been said, that the same privilege was given to the *citizens and burgessees* by Edw. I., in order to procure from them supplies, when he was at war with France, and foresaw it from Scotland. The mistake arises from attending too much to political, and too little to natural and to feudal views. The feudal system, slow and regular in its movements, was not to be whirled about, in subservience to ministers, or even to exigencies. The ranks of the state, intitled to government, were fixed in the original constitution ; gradual alterations in the constitution might produce gradual alterations in the ranks of the state ; and, accordingly, the gradual enfranchisement of the boroughs, the gradual dismem-
bering

bering of the great baronies, and the gradual distribution of the demefne lands of the crown, brought the burgefles and the freeholders into parliament; but that new ranks fhould be made, by a political nod, to ftart up at once, in order to deprive thofe of government, who had poffeffed it for centuries, is not to be credited in that fyftem, which, of all others, was the moft exact in afcertaining the orders of men. If the commons were brought into parliament, to ferve a political purpofe in England, what was the political purpofe, and where was the Montfort, or the Edward, who brought them into parliament in Scotland (5) ?

THAT knights of the fhires were called up to parliament, for the fole purpofe of leffening the power of the barons; and citizens and burgefles, for the fole purpofe of more readily obtaining fupplies for the crown, feems to be a far-fetched conclufion. They both ap-

(5) DALRYMP, Feod. Prop. 268.

pear to have been produced by very natural causes. When the barons were considered as representing the tenants of their baronies, it was a natural consequence, on the erection of burgage fiefs by the crown, for the burgage tenants, or burgessees, to be also represented in parliament. And when great part of the baronies came into other hands, and the crown fell into the practice of granting its demesne lands in counties, as well as boroughs, in fief, by means whereof the number of the tenants *in capite* in counties (6), became greatly augmented, it was as natural, to cause these tenants to be likewise represented by knights of the shires. These seemingly were the real primary causes of the origin and extension of the house of commons. If Edw. I. had been actuated only by the political motives which some have ascribed to him, as he must know that the dissipation of the property of the barons had diminished their

(6) DALRYMP. Essay towards a Gen. Hist. of Feod. Prop. c. 8. p. 265.

Statute *de
donis condi-
tionalibus.*

power, would he ever have consented to the statute *De donis conditionalibus* (7); which, by checking the freedom of alienation, was the most likely means of preserving that power? The truth is, the alterations originated, not so much from any policy of the princes, as the genius of the times. If this had not been the case, such an outrage would never have been submitted to. The alterations had, however, the effects that have been attributed to them; but possibly those effects might not have been foreseen at the times the alterations took place.

Statute *quia
emptores.*

THE statute of *quia emptores*, in the 18 Edw. I., was the means, perhaps, of producing other important alterations, which probably at the time were never thought of. 'Upon the dismembering of a fief, new purchasers were made to hold, not of the alienor, but of the chief lord of the fee of whom the vendor himself held the same (8).'

(7) Stat. 2 Westm. c. 1. 13 Edw. I.

(8) DALRYMP. Feod. Prop. 273.

If the vendor held the fief of the crown, the purchaser became the crown's vassal. He held immediately, that is, *in capite*, of the king. And as an addition to the number of the king's tenants *in capite*, produced a representation by *knights of the shires*, so, by an addition to the number of the king's immediate vassals in boroughs, was, in process of time, also produced an addition to the number of *citizens* and *burgesses*.

‘ UNDER Edw. II. the commons began to annex petitions (9) to the bills by which they granted subsidies (10);’ and it has been facetiously remarked, that they seldom failed to pass *in such agreeable company*.

Temp.
Edw. II.

BUT in the reign of Edw. III. an important alteration took place (11). The members of the English parliament, at this time,

Temp.
Edw. III.

(9) See NOTE [L].

(10) DE LOLME, Const. of Eng. 41.

(11) BLACK. Com. b. iv. c. 33. p. 421. JOHNS. Monarchical Gov. c. 28. p. 276. See also Note (2), p. 45.

it is thought (because, as some say, they were not able (12), in their several perambulations, to find one room capable of holding them), came to be divided into two houses. Hence, therefore, we shall often find them setting up privileges separate and distinct from those of the lords. And as an act had before been obtained, that no *tax* should be laid without the consent of both lords and commons; so now the commons declared, that they would not, in future, acknowledge any *law* to which they had not assented (13). Thence they clearly became a part of the legislature. And soon after this, they exerted the important privilege of impeaching (14) some of the first ministers of state (15).

(12) DALRYMP. Feod. Prop. 268. HOME'S *Essays on several Subjects*, 41.

(13) See NOTE [M].

(14) DE LOLME, *Const. of Eng.* 41.

(15) See NOTE [N].

IN the reign of Richard II. (16) they first chose a Speaker. ' They had then gained such an ascendancy, that, in the first year of the succeeding king, they even attempted to share with the lords in their judicial capacity (17).'

Temp.
Rich. II.

IN the seventh year of this king's reign was made the first petition against an undue election of members to serve in parliament. And it is to be observed it was made to the king, lords, and commons (18).

TILL the reign of Richard II. (19) who made a baron a title of honour, by con-

(16) HUME's *Essays on several Subjects*, 41. HUME's *Hist. Eng.* vol. iii. p. 3. JOHNSTON on *Monarch. Gov.* c. 28. p. 276. 280.

(17) RUFFHEAD's *Pref. to Stat. at Large*, 14. It would certainly have been destructive of liberty, had impeachments been tried in the house of commons. Representing the people, they would have been, as it were, the party injured, the accuser, and judge. *Sp. L. b. xi. c. 6.* Being no court of judicature, they have no authority to administer an oath.

(18) JOHNSTON on *Monarch. Gov.* c. 28. f. 10. where this subject is pretty much enlarged on.

(19) BLACK. *Com. b. i. c. 12. p. 400.* 1 *Inst.* 9. SELD. *Jan. Angl.* 2. f. 66.

ferring it on divers persons by his letters patent, there were no other barons among the peerage but such as were summoned by writ *in respect of the tenure of their lands or baronies* (20). Originally the possession of a fief conferred the honour of nobility and an office over certain districts. But when the peerage, from being feudal, territorial, and official, became allodial, personal, and honorary, it was easy to see, that the ancient dignity of the peerage would be lessened, and that the power of the antient barons would be weakened. MONTESQUIEU (21) says; that ‘as the dignity of a monarch is inseparable from that of his kingdom, so is the dignity of a nobleman from that of his fief.’ And yet it is probable that the important consequences which naturally arose from this departure from the feudal system, were neither intended nor foreseen by King Richard.

Temp.
Hen. IV.

‘UNDER Henry IV. the commons refused to grant any subsidies before a precise answer

(20) DALRYMP. Feod. Prop. 269.

(21) Sp. L. b. v. c. 9.

was given to their petitions (22).’ And in subsequent times, *grievances and supplies* were made to go hand in hand: which practice was carried to so dangerous an excess as almost to threaten the extinction of the upper house of parliament; and occasioned a standing order of that house, to reject any bill whatsoever to which a money-bill was tacked.

‘ FORMERLY, all bills were drawn in the form of *petitions*, which were entered upon the *parliament* rolls, with the king’s answer thereto subjoined, not in any settled form of words, but as the circumstances of the case required: and at the end of each parliament, the judges drew them into the form of a statute, which was entered on the *statute* rolls. In the reign of Henry V., to prevent mistakes and abuses, the statutes were drawn up by the judges before the end of the parliament (23).’

Temp.
Hen. V.

(22) DE LOLME, Const. of Engl. 77.

(23) See NOTE [O].

Temp.
Hen. VI.

‘ AND in the reign of Henry VI. bills
‘ in the form of acts, according to the mo-
‘ dern custom, were first introduced (24).’

Temp.
Hen. VII.

THE statute of 4 Hen. VII. c. 24., we are told, ‘ was craftily and covertly contrived to
‘ facilitate the destruction of entails (25),’ in order ‘ (26) to weaken the overgrown power
‘ of the nobles’. But, instead of its being founded on this or the more narrow policy of ‘ amassing treasure into the king’s cof-
‘ fers (27),’ may it not more reasonably be presumed to have arisen from the circumstances of the times, and the change which had happened in the feudal tenures ?

THE statute was certainly agreeable to the temper and genius of the people, which were bent against the feudal system. The martial spirit of the nation had declined ; a commer-

(24) FLACK. Com. b. i. c. 2. p. 181.

(25) Ib. b. iv. c. 33. p. 422.

(26) Ib. b. ii. c. 7. p. 118. and b. ii. c. 21. p. 354.

(27) Ib. b. iv. c. 33. p. 422.

cial disposition had arisen. The landed men, the monied men, found their views equally restrained by entails; and the lawyers had long inveighed against them. It is true, the great lords, for some time, forbore to make any positive alteration in the law which might affect entails, but they were discountenanced in courts of justice; as was also the new contrivance, to make a forfeiture of the estate in case of alienation (28); whilst such devices as had been invented to elude the old entails, were supported (29). So early as in the reign of Edward IV. the device of a common recovery to bar an entail, received a judicial decision (30). Mr. ASTLE, in his publication of the will of Hen. VII., seems to give, in very accurate terms, the true idea of this matter. He says, that Hen. VII. gave a fatal blow to that formidable body [the nobles], by the statute passed in the fourth year of his reign, by which the *sanction of the law* was given to that method of barring entails, which

(28) COKE LITT. 377.

(29) BACON. Abr. voc. *Fine and Recovery*, 541.

(30) TALCARUM's Case.

had hitherto rested chiefly on the *decision of lawyers*; and by *facilitating* the alienation of land, he gave occasion for the dispersion of that property, which is ever accompanied by power. Sir WILLIAM BLACKSTONE (31), who seems to have imbibed the notion that the statute was obtained through the craft and subtlety of the prince, indeed admits, that when the statute was passed, common recoveries 'had not obtained their full strength' and authority.' Therefore it follows, that the alteration made by this statute was not altogether occasioned by a desire in the prince, either to 'weaken the overgrown power of the nobles,' or to 'amass treasure into his coffers;' but that the statute was a concurrent cause, which naturally arose from an insensible alteration in the feudal system; the martial tone of which had yielded to the milder voice of commerce.

WHEN the alteration took place, many important consequences, which were not, per-

(31) Com. b. ii. c. 7. p. 118.

haps, foreseen, were, however, to flow from the dissolution of entails, and the consequent transition of property (32).

IF we may credit several writers, these consequences have been prodigious. Sir HENRY WOTTON, so early as the days of Queen Elizabeth, used to say, that 'the reign of Henry VII. had ruined the English monarchy (33).' And a writer in our own times (34) tells us, 'That the statute of 4 Hen. VII. has transferred the weight of the ancient barons to the house of commons, has sunk the authority of the nobility for ever, and even bound down the crown within such limits, since the Restoration, as neither force, nor artifice, nor corruption itself, have hitherto been able to break asunder.'

THIS is a heavy charge; and yet it is, perhaps, better founded than may generally be imagined, if the statute of 4 Hen. VII. were the cause of the great addition which was soon

(32) DALRYMP. Hist. Feod. Prop. c. iv. p. 137.

(33) Dr. SQUIRE on the Anglo-Sax. Gov. 345.

(34) Dial. on the actual State of Parl.

afterwards.

afterwards made to the house of commons. The addition I mean, is that which is mentioned in Serjeant GLANVILLE's Reports, and is as follows :

Boroughs, &c. restored and created from Hen. VIII. to Chas. II. in- clusive.	<i>Boroughs, &c. restored by K. Hen. VIII.</i>	No. of Memb.	<i>Boroughs, &c. created by K. Hen. VIII.</i>	No. of Memb.
	Orford	2	27 H. VIII. c. 26. }	Anglesea county 1
				Beaumaris - 1
				Brecknock county 1
				Brecknock town 1
				Cardigan county 1
				Cardigan town 1
				Carmarthen county 1
				Carmarthen town 1
				Carnarvon county 1
				Carnarvon town 1
				Denbigh county 1
				Denbigh town 1
				Flint county - 1
				Flint town - 1
				Glamorgan county 1
				Cardiff - 1
				Merioneth county 1
				Montgomery county 1
				Montgomery town 1
				Pembroke county 1
				Pembroke town 1
				Haverfordwest - 1
				Radnor county 1
				New Radnor - 1
				Monmouth county 2
				Monmouth town 1
			34 H. VIII. c. 13. }	Chester county 1
				Chester city - 2
				Berwick upon Tweed 2
		<hr/> 2		<hr/> 33

*Boroughs, &c. restored by
K. Edw. VI.*

		No. of Memb.
1 Edw. VI.	Lancaster	- 2
	Preston	- 2
	Wigan	- 2
	Liverpool	- 2
6 Edw. VI.	St. Albans	- 2
	Petersfield	- 2
	Litchfield	- 2
	Heydon	- 2
	Thirsk	- 2
	Ripon	- 2
		<hr/>
		29

By Q. Mary.

1 Q. M.	Droitwich	- 2
	Woodstock	- 2
		<hr/>
		4

By Q. Elizabeth.

1 Eliz.	Tregony	- 2
5 Eliz.	Beverley	- 2
13 Eliz.	East Retford	- 2
		<hr/>
Carry over		6

*Boroughs, &c. created by
K. Edw. VI.*

		No. of Memb.
1 Edw. VI.	Thetford	- 2
	Peterborough	2
	Brackley	- 2
	Boston	- 2
6 Edw. VI.	Saltaſh	- 2
	Camelford	- 2
	Westlow	- 2
	Grampound	- 2
	Boſſiney	- 2
	Michell	- 2
	Newport	- 2
	Maidſtone	- 2
	Westminster	- 2
	Penryn	- 2
		<hr/>
		28

By Q. Mary.

1 Q. M.	Ayleſbury	- 2
	Morpeth	- 2
	Banbury	- 1
	Knareſborough	2
	Boroughbridge	2
2&3 P.&M.	Higham Ferrers	1
	Abingdon	- 1
	St. Ives	- 2
	Alborough	- 2
	Caſtle Riſing	- 2
		<hr/>
		17

By Q. Elizabeth.

1 Eliz.	Newton	- 2
	Cliſthero	- 2
	Minehead	- 2
		<hr/>
Carry over		6

*Boroughs, &c. restored by
Q. Elizabeth.*

		No. of Membr.
	Brought over	6
27 Eliz.	Yarmouth } in the Isle	2
	Newport } of Wight	2
	Andover	2

—
12*By K. James.*

2 Ja. I.	Harwich	-	2
3 Ja. I.	Evesham	-	2
18 Ja. I.	Ilchester	-	2
19 Ja. I.	Pontefract	-	2
21 Ja. I.	Agmondesham	-	2
	Wendover	-	2
	Great Marlow	-	2
	Hertford	-	2

—
16*Boroughs, &c. created by
Q. Elizabeth.*

		No. of Membr.
	Brought over	6
1 Eliz.	Sudbury	- 2
5 Eliz.	St. Germain's	- 2
	St. Mawes	- 2
	Stockbridge	- 2
	Tamworth	- 2
13 Eliz.	Eastloe	- 2
	Fowey	- 2
	Cirencester	- 2
	Queenborough	- 2
	Christchurch	- 2
	Aldborough, Suffolk	2
	Eye	- 2
14 Eliz.	Corfe Castle	- 2
27 Eliz.	Kellington	- 2
	Bereafston	- 2
	Bishop Castle	- 2
	Newton, Isle of Wight	2
	Lymington	- 2
	Whitchurch	- 2
	Haffelmere	- 2
	Richmond	- 2

—
48*By K. James I.*

1 Ja. I.	{ Cambridge Uni-	{ 2
	versity	-
	Oxford University	2
3 Ja. I.	Bewdley	- 1
7 Ja. I.	Tewkesbury	- 2
13 Ja. I.	Tiverton	- 2
18 Ja. I.	St. Edmond's Bury	2

—
11

<i>Boroughs, &c. restored by K. Charles I.</i>		<i>Boroughs, &c. created by K. Charles I.</i>	
	No. of Memb.		No. of Memb.
3&4 Cha. I. Weobly	- 2	None	- 0
Milborn Port	2		
15 Cha. I. Seaford	- 2		
16 Cha. I. Cockermouth	2		
Oakhampton	2		
Honiton	- 2		
Ashburton	2		
Northallerton	2		
Malton	- 2		
	<u>18</u>		<u>0</u>
<i>By K. Charles II.</i>		<i>By K. Charles II.</i>	
None	- 0	25 C. II. } Durham county	2
		c. 9. }	
		Durham city	2
		29 C. II. } Newark up-	2
		on Trent }	
	<u>0</u>		<u>6</u>

Summary.

<i>Restored.</i>		<i>Created.</i>	
By K. Henry VIII.	- 2	By K. Henry VIII.	- 33
Edward VI.	- 20	Edward VI.	- 28
Q. Mary	- 4	Q. Mary	- 17
Elizabeth	- 12	Elizabeth	- 48
K. James I.	- 16	K. James I.	- 11
Charles I.	- 18	Charles II.	- 6
	<u>72</u>		<u>143</u>
			<u>72</u>

Total restored and created in those (35) reigns 215

(35) BURGH, in his Pol. Disquis. 61, says, ' That in Hen. VIII.'s first parliament, there were 148 counties and boroughs, which sent members, and the whole number of the commons was

To which number add the number contained in this list - 215

And it makes the exact number of members at present contained in the house of commons, exclusive of the 45 for Scotland, viz

So that, taking in the 45 members added for Scotland at the union, the number of members in the house of commons has been very nearly doubled, since the beginning of the reign of Hen. VIII. the natural consequence of which must be obvious to every one.

Temp.
Hen. VIII.
and Q. Eliz.

THESE were important alterations ; and King Henry VIII. having added to the house of commons, as we have seen, 35 members,

Edw. VI.	-	-	48
Q. Mary	-	-	21
Elizabeth	-	-	60

In all 164

the nation soon felt, that the balance of the governing powers was altered ; and that the undue weight, with which it had been loaded, whilst the power was vested either in the king or the nobles, was no less heavy when transferred into the hands of the commons.

MANY are the encomiums which have been passed on the reign of Q. Elizabeth, and much the obloquy on those of her two immediate successors. But, perhaps, no considerate person, divested of partiality and prejudice, will now deny, that both the praise and censure were unmerited ; at least, in the extent in which they have been generally bestowed.

THE truth is, it was the fortune of both Henry VIII. and Q. Elizabeth, to reign at an æra, when, with tolerable prudence, they could have nothing to fear, either from the higher or lower house of Parliament (36). The first had been (37) either cut off, or so far weakened and dismayed by the preceding civil wars between the houses of York and Lancaster, and, vying with the opulent citizens in magnificence, had been so far debilitated by the dissipation of their ancient patrimonies, and by the power which the commons had assumed, that all danger was apparently over from that quarter. And as for the latter, they ' who had hitherto been un-
' used to treat with their kings but by the
' *mediation* of the great lords, being now
' pushed into the presence, were half-dis-
' countenanced in the eye of majesty; and
' durst scarcely look up to the throne, much

(36) If the nobles were formerly possessed of an im-
' moderate power, and the monarch had found the means
' of abasing them by raising the people, the point of ex-
' treme servitude must have been that between humbling
' the nobility, and that in which the people began to feel
' their power.' Sp. L. b. xix. c. 27.

(37) HURD's Mor. and Pol. Dial. 262.

‘ less dispute the prerogatives with which such
 ‘ awful princes were thought to be invest-
 ‘ ed (38).’

NEVERTHELESS it could not have entirely escaped the observation of these monarchs, that an alteration had taken place, by the dissolution of intails, the consequent transition of property, the new channels of wealth which had been opened by commerce, and the declension of the power of the clergy by the introduction of the art of printing ; and consequently that the necessity and ignorance which had formerly produced great subordination and reverence, no longer existed.

AT the first, if the house of commons was created to balance the weight of the ancient barons, one cannot help imagining, that, afterwards, members were added to balance the weight of the house of commons itself.

IN Cornwall (39) only, ‘ where,’ as the the Author of a *Dialogue on the actual State*

(38) HURD’S Mor. and Pol. Dial. 265.

(39) See NOTE [P].

Chap. VI. GOVERNMENT OF ENGLAND.

of Parliament observes, ' the royal influence
' could be supposed most likely to prevail,'
the following boroughs were created and re-
stored :

By Edw. VI.	Saltaſh,
	Westloe,
	Grampound,
	Camelford,
	Penryn,
	Boſſiney,
	Michell,
	Newport,
Q. Mary.	St. Ives,
Elizabeth.	Eastloe,
	Tregony,
	Fowey,
	St. Germain's,
	St. Maw's,
	Kellington.

BOTH Henry VIII. and Q. Elizabeth, it is
plain, were extremely jealous of the riſing
power of the commons.

' It is ſaid, that once when Henry VIII.
heard that the commons made a great diffi-

culty of granting a supply that was required, he was so provoked, that he sent for Edward Montague, one of the members, who had a considerable influence on the house; and he being introduced to his majesty, had the mortification to hear him speak in these words: "*Ho! man! will they not suffer my bill to pass?*" And laying his hand on Montague's head, who was then on his knees before him, "*Get my bill passed by to-morrow, or else to-morrow this head of yours shall be off.*" This cavalier manner of Henry succeeded; for next day the bill passed. COLINS's *British Peerage*. GROVE's *Life of Wolsey*.—We are told by HALL, p. 48. That cardinal Wolsey endeavoured to terrify the citizens of London into the general loan, exacted in 1525, and told them plainly, that "*it were better that some should suffer indigence, than that the king at this time should lack; and therefore beware, and resist not, nor ruffle not in this case, for it may fortune to cost some people their heads.*" Such was the style used by this king and his ministers (40).'

(40) HUME's *Hist. of Eng.* vol. iv. p. 452. note [B].

‘ As to such matters of government as alliances, peace and war, or foreign negotiations, no parliament in those ages ever presumed to take them under consideration, or question, in these particulars, the conduct of their sovereign, or of his ministers (41); and respecting other great points of government, Q. Elizabeth frequently reminded the house not to meddle with any matters of either church or state (42). ‘ She took notice ‘ by the mouth of her Speaker, that certain ‘ members spent more time than was necessary, by indulging themselves in harangues ‘ and reasonings (43).’ At another time, ‘ she sent her orders by the mouth of the ‘ Speaker, commanding the house to spend ‘ little time in motions, and to avoid long ‘ speeches (44).’ And ‘ when the Speaker, ‘ Sir Edward Coke, made the three usual requests, of freedom from arrests, of access to ‘ her person, and of liberty of speech; she ‘ replied to him by the mouth of Puckering,

(41) HUME’s Hist. of Eng. vol. v. p. 173.

(42) Ib. p. 173. 178. 181. 365. JOHNSTON on Monarchical Gov. c. xxviii. s. 8.

(43) Ib. p. 367.

(44) Ib. p. 178.

' lord-keeper, " that liberty of speech was
 " granted to the commons, but they must
 " know what liberty they were entitled to ;
 " not a liberty for every one to speak what he
 " listeth, or what cometh in his brain to
 " utter ; their privilege extended no farther
 " than a liberty of *Aye* or *No*." That she
 ' enjoined the Speaker, if he perceived any
 ' idle heads so negligent of their own safety,
 ' as to attempt reforming the church, or in-
 ' novating in the commonwealth, that he
 ' should refuse the bills exhibited for that
 ' purpose, till they were examined by such
 ' as were fitter to consider of these things,
 ' and could better judge of them : that she
 ' would not impeach the freedom of their
 ' persons ; but they must beware, lest, under
 ' colour of this privilege, they imagined that
 ' any neglect of their duty could be covered
 ' or protected (45).

BECAUSE *Strickland*, one of the members,
 revived a bill in parliament for the amend-
 ment of the liturgy, which had formerly been

(45) HUME's Hist. of Eng. vol. v. p. 363.

rejected,

rejected, she 'prohibited him thenceforth from
' appearing in the house of commons (46).'
Because *Robert Bell* made a motion against an
exclusive patent, 'contrived for the profit of
' four courtiers, and attended with the utter
' ruin of seven or eight thousand of industrious
' subjects, he was sent for by the council, and
' was severely reprimanded for his teme-
' rity (47).' Because *Peter Wentworth* (48),
another member, ventured to transgress the
imperial orders of Elizabeth, in presenting a
petition to the lord-keeper, in which he de-
sired the upper house to join with the lower
in a supplication to her majesty for entailing
the succession of the crown, she sent *Went-*
worth immediately to the Tower, committed
Sir Thomas Bromley, who had seconded him,
to the Fleet prison, together with *Stevens* and
Welsh, two members, to whom *Sir Thomas*
had communicated his intention. Because
Morrice (49) chancellor of the duchy, and at-

(46) HUME's Hist. of Eng. vol. v. p. 175.

(47) Ib. p. 180.

(48) Ib. p. 364. JOHNSTON on Monarchical Gov.
c. xxviii. f. 8.

(49) Ib. p. 365. JOHNSTON, ib.

torney of the court of wards, made a motion for redressing the abuses in the bishops court, and in the high commission, she caused him to be seized in the house by a serjeant at arms, discharged him from his office of chancellor, incapacitated him from any practice in his profession as a common lawyer, and kept him some years prisoner in Tilbury castle. In short, it is said, that, during the reign of Q. Elizabeth, ' whenever any delicate point ' was touched, though ever so gently; nay, ' seemed to be approached, though at ever so ' great a distance, the whisper ran about the ' house, " The queen will be offended; the ' council will be extremely offended:" and by ' these surmises men were warned of the dan- ' ger to which they exposed themselves (50).'

CONSIDERING all this, one is not much surprised to find Henry VIII. though ' he ' had rendered himself a foe both to the *ca-* ' *tholics* and the *protestants* (51), and though he kept no standing army (52), so daring as

(50) HUME'S Hist. of Eng. vol. v. p. 180.

(51) RAPIN'S Hist. of Eng. vol. vii. p. 495.

(52) DE LOLME, Const. Eng. p. 390.

to hazard an innovation in religion, the most perilous enterprize in which any sovereign can engage, and in the event capable of destroying the power of the pope, and of becoming, as it were, the pope himself (53); of dissolving the monasteries, although they contained (54) twenty-nine lords of parliament; and of making his own proclamations to pass for laws (55); in short, that he should, in fact, become absolute both in church and state; or that Q. Elizabeth should institute the arbitrary court of high commission, and increase (56) the power of the star-chamber.

BUT, notwithstanding all this, and notwithstanding so great a weight of power was brought to the crown by the king's being made supreme in the church (which, with the barons, was formerly the only check on mo-

(53) ' NAT. BACON expresses it, in his way, as a ' strange kind of monster,' " A king with a pope in his " belly." Disc. part ii. p. 125. HURD's Mor. and Pol. Dial. p. 266.

(54) HUMER's Hist. of Eng. vol. iv. p. 458. note [I].

(55) This terrible act is 31 Hen. VIII. c. 8. It was repealed by 1 Edw. VI. c. 12.

(56) BLACK. Com. b. iv. c. 33. p. 426.

narchical

narchical authority), the representative assembly, though depressed, was far from being extinguished.

ELIZABATH, or her able advisers, doubtless were aware, that members of parliament no longer consisting of tenants and dependants of the crown, ‘ the power of the kingdom had gradually shifted its channel (57);’ but though she had penetration enough to discern the circumstance, she had so much wisdom or cunning as not to provoke the commons so far as to discover and feel their strength. She seldom, perhaps, wantonly made use of her prerogative, but used it only to answer some (58) important purpose; and, happily, whenever she found the current of the public opinion too strong against her, she wisely receded, without coming to an open rupture. That the power of the house of commons, in the reign of Q. Elizabeth, was beginning to shew itself, is plain from this, that in the thirteenth year of her reign,

(57) BLACK. Com. b. iv. c. 33. p. 428.

(58) Ibid.

the first instance occurs of election bribery; one Thomas Longe, having given the returning officer and others of the borough (59), for which he was chosen, 4l. to be returned member (60). Besides, De Wit, the pensionary of Holland, declared, in the reign of Charles II. ‘ that *ever since the reign of*
‘ *Q. Elizabeth*, there had been such a fluctua-
‘ tion in the English councils, that it was
‘ not possible, for two years together, to take
‘ any sure or certain measures with the king-
‘ dom (61).’ Elizabeth herself openly de-
‘ clared, that the ‘ assembling of a parliament
‘ was a measure she never embraced, except
‘ when constrained by the necessity of her
‘ affairs (62).’ Rather than apply to parlia-
ment, she thought fit, though a manifest in-
jury to her successors, to sell the crown lands.
And true it is, ‘ that from the first to the last
‘ of the Tudor line, imperious and despotic as
‘ they were of their own nature, no stretch of

(59) WESTBURY Wiltf. BURGH’s Pol. Disq. vol. i. p. 286. and Parl. Hist. vol. iv. p. 154.

(60) D’EWES, p. 181. BLACK. Com. b. i. c. 2. p. 179.

(61) HUME’s Hist. of Eng. vol. vii. p. 434.

(62) *Ib.* vol. v. p. 235.

‘ power was ventured upon by any of them,
 ‘ but under the countenance and protection
 ‘ of an act of parliament. Hence it was,
 ‘ that the Star Chamber, though the jurif-
 ‘ diction of this court had the authority of
 ‘ the common law, was confirmed by statute;
 ‘ that the proceedings of Empson and Dudley
 ‘ had the sanction of parliament; that Hen-
 ‘ ry VIII.’s supremacy, and all acts of power
 ‘ dependent upon it, had the same founda-
 ‘ tion (63).’

THE felicity of the reign of Q. Elizabeth was owing, perhaps, more to her policy, than her moderation. She adopted, we are told, the Machiavelian (64) principle, *divide et im-pera*, throughout her whole reign. It is said, she paid the greatest respect to the two prevailing factions of her time. ‘ The church-
 ‘ men and puritans divided her favour so
 ‘ equally, that her favourites were sure to
 ‘ be the chiefs of the contending parties (65).’

(63) HURD’S Mor. and Pol. Dial. p. 269. A&A Regia, vol. iv. p. 195.

(64) HURD’S Mor. and Pol. Dial. p. 156.

(65) Ibid.

Had Charles I. (66) pursued the same conduct, and could have rested satisfied with the legal limitations that were put upon an almost boundless prerogative, the good sense of the nation might, possibly, at length, have prevailed, and given him that weight which the king ought ever to hold in this country. If, in modern times, this policy had *not* been pursued, Heaven knows what might have been the consequence!

IN early times, ‘parliaments sat but a few days, and took into consideration such affairs only as the king had before set forth in the writs of summons (67);’ a practice conformable to a provision in the great charter of king John, expressed in these words: ‘and in all letters of summons, we will express the cause of the summons (68).’ And, in later times, ‘during the reign of Q. Elizabeth, and the reigns preceding, the sessions of parliament were not usually the twelfth part so

(66) CLAR. Hist. Rebel. vol. i. p. 254.

(67) RAP. Hist. of Eng. vol. ix. b. 18. p. 492, note.

(68) Magna Charta of K. John, c. 14.

‘ long as the vacations (69).’ And, perhaps, long meetings of parliament may be ‘ not only ‘ troublesome to the representatives, but may ‘ cut out too much work for the executive ‘ power ; so as to take off its attention from ‘ executing, and oblige it to think only of defending its own prerogatives, and the right ‘ it has to execute (70).’

Temp.
James I.

BUT when James I. a stranger, came to the throne, and allowed the commons, as they confessed in the seventh year of his reign, ‘ more freedom of debate than ever had been ‘ indulged by any of his predecessors (71) ; ‘ every man began to indulge himself in political reasonings and enquiries (72):’ and when we are told, that, at this time, Sir John Saville furnished a memorable instance, never known before, ‘ of any king’s advancing a ‘ man, on account of parliamentary interest, ‘ and of opposition to his measures (73),’ we

(69) HUME’s Hist. of Eng. vol. vi. b. 45, p. 16.

(70) Sp. L. b. xi. c. 6.

(71) HUME’s Hist. of Eng. vol. vi. p. 568. note [O].

(72) Ibid. p. 117.

(73) Ibid.

do not wonder withal to be told, that the commons then, ' for the first time, entered ' an order for the regular keeping of their ' journals (74) ;' that factions (75) began to commence, and be propagated throughout the nation ; that towns (76), which had formerly neglected their right of sending members, then began to claim it ; that what was formerly looked upon as matter of indifference, became a subject of great importance (77).

WHETHER James I. or the parliament, gave the first rise to the disputes which afterwards happened between them, may be too much for me to determine. It may be sufficient to refer to what is said by two writers of contrary principles, Mr. HUME and Mrs. MACAULAY (78).

(74) HUME's Hist. of Eng. vol. vi. p. 44. anno 1607. JOHNSTON on Monarchical Gov. c. xxviii. s. 11.

(75) RAP. Hist. of Eng. vol. ix. p. 498.

(76) Journ. Feb. 26, 1623. HUME's Hist. of Eng. vol. vi. p. 171.

(77) See NOTE [Q].

(78) See NOTE [R].

Temp.
Charles I.

THE timidity of James I. which had concurred with other causes in making the commons so refractory, was the means, however, of preventing matters being carried to those extremities which afterwards followed. Receiving scanty supplies, he did little more than talk of his prerogative. But Charles I. more daring, perhaps suspecting no danger, conscious of the rectitude of his intentions, provoked with the conduct of the commons during the reign of his father; and (knowing how much the war (79), for which supplies were wanted, had been countenanced by the parliament), displeased at the complaint of grievances, instead of receiving supplies (80), misled by ancient precedents in his own court, and the practice of other courts in Europe; finding that concession only begat contempt and further encroachment; and being flattered by foolish doctrines of the absolute, hereditary, indefeasible, divine right of kings; and of passive obedience and non-resistance; he first offended his parliament, by a partiality

(79) For the recovery of the Palatinate.

(80) See NOTE [S].

to the duke of Buckingham, which had been so offensive in his father; and then offended his people, by putting in practice what his father had only ventured to preach. Fondly hoping, if he could but raise a revenue and an army, he might be able to rule without a parliament, he levied money, and billeted the army upon the subject, by virtue of his prerogative. But he soon found that four hundred and ninety-four members of the house of commons (81) were great odds against one man; and especially as the temporal peers, who might be supposed to resist any improper incroachment by the commons, did not at that time exceed ninety-seven (82). So early as in the third year of his reign, he was obliged to consent to the petition of right; setting forth in substance, that no man should be compelled to yield any benevolence, tax, or such-like charge, without common consent by

(81) HUME's Hist. of Eng. vol. vi. c. 49. p. 156. But Mr. HUME seems to have miscalculated the number of the members. In p. 63 it appears, that Charles the First's first parliament consisted of four hundred and eighty-nine members.

(82) Ibid.

act of parliament, or be questioned on account thereof; that the people should not be burdened with soldiers or mariners; that no freeman should, on any pretence, be imprisoned or detained, contrary to *Magna Charta*; and that the writ of *habeas corpus* should not be eluded (83). This statute, however, was far from healing the differences then subsisting. By the arts of ambitious men, the king was again necessitated, as he imagined, to have recourse to his prerogative; and to raise money on the subject, by conferring the honour of peerage and knighthood; by dispensing with the penal laws against catholics; by fines for offences tried in the court of star-chamber; by fines or compositions for converting arable lands into pasture, and for encroachments on the king's forests; by ship-money, coat and conduct-money, tonnage and poundage, purveyance, pre-emption, monopolies, the sale of crown lands, and loans and benevolences. As soon, however, as these resources failed, and the king's necessities compelled him, after an in-

(83) Stat. 3 Cha. I. c. 1.

termiffion of parliaments for above twelve years (84), to call them again together, they began to fhew as high notions of their authority as the king had done of his. The doctrine, that the privileges of parliament were only graces or grants from the crown, was retorted; and the prerogatives of the crown were reckoned no more than grants from the people; beftowed at the time of entering into the original contract at the firft formation of fociety; and that as all power originated from the people, and the houfe of commons were the people's representatives, the houfe of commons ought to be confidered as holding a place greatly fuperior to any they had ever yet pretended to. A party petitioned the king to 'employ fuch perfons in public affairs, and to take fuch perfons to be near him in places of truft, as parliament could CONFIDE in (85);' meaning, I fuppofe, themfelves. A *proteftation* was drawn up and entered into, to defend the privileges of par-

(84) Lord CLAR. Hift. Rebel. b. i. p. 58.

(85) Ibid. b. iv. p. 255.

liament (86). A statute, to which the long intermission of parliaments had given great countenance, enacted, That parliaments should not be adjourned, prorogued, or dissolved, without their own consent (87). From that moment the constitution was dissolved. The executive power, as Mons. DE LOLME expresses it, becoming double (88), and a perpetual co-ordinate authority being erected, an authority controulable by no one, accountable to no one; a contention for power as naturally arose, and became inflamed into a civil war, 'as the sparks fly upward.' Royal authority was immediately of no account, unless *signified by the houses of parliament*. Though the ecclesiastical government was formed on the same model as the civil, and the clergy, from time immemorial, as well as the laity, had had persons to preserve their rights from either regal or popular encroachment, the bishops were to have no vote in parlia-

(86) CLAR. Hist. Rebel. b. iii. p. 198.

(87) Stat. 16 Cha. I. c. 7. anno 1640.

(88) DE LOLME, Const. Eng. b. ii. c. 3. p. 222. note, 4th edit.

ment (89). It availed nothing that every concession of the crown that was necessary, was actually made before the rebellion broke out; by the several ' statutes for triennial ' parliaments, for abolishing the star-chamber ' and high-commission courts, for ascertaining the extent of forests and forest laws, for renouncing ship-money and other exactions, ' and for giving up the prerogative of knight- ' ing the king's tenants *in capite*, in consequence of their feudal tenures (90).' The folly of some, and the ambition and interested views of others, united, not to regulate the

(89) Lord CLAR. Hist. Rebel. b. iv. p. 333. ' There ' are men who have endeavoured, in some countries in ' Europe, to abolish all the jurisdiction of the nobility; ' not perceiving that they were driving at the very thing ' that was done by the parliament of England. Abolish ' the privileges of the lords, of the clergy, and of the ' cities in a monarchy, and you will soon have a popular ' state, or else a despotic government.

' Far am I from being prejudiced in favour of the ' privileges of the clergy; however, I should be glad ' their jurisdiction were once fixed. The question is not, ' whether their jurisdiction was justly established, but ' whether it be really established; whether it *constitutes a ' part of the laws of the country, and is in every respect re- ' lative to those laws.*' Sp. L. b. ii. c. 4.

(90) BLACK. Com. b. iv. c. 33. p. 430.

kingly office, but to transfer it to the house of commons. The *fine qua non*, at last, produced by the house of commons was, that all matters which concerned the public should be resolved and transacted *only* in parliament, [which, being intended to take from the king his part of the legislative authority, as what follows, was designed to take away his executive power, was, as the king justly answered, ‘to depose him and his posterity (91)].’ That all privy councillors should be *approved*, that is, *chosen* by parliament; that no act of the king, proper for the advice of the privy

(91) CLAR. Hist. Rebel. b. v. p. 501. ‘We may,’ said the king, ‘be waited on bare-headed, we may have our hand kissed, the style of majesty continued to us, and the king’s authority declared by both houses of parliament may be still the style of your commands; we may have swords and maces carried before us, and please ourself with the thoughts of a crown and sceptre (and yet even these twigs would not long flourish, when the stock upon which they grew were dead); but as to true and real power, we should remain but the outside, but the picture, but the sign of a king.’ RAP. Hist. of Eng. vol. xi. c. 20. p. 541.

Every one that would wish to know the nature of the claims made by the house of commons in the time of Charles I. and the tendency of them, should read the nineteen propositions made to the king, and the king’s answer to them.

council,

council; should have validity, unless done by the advice and consent of such *approved* council; that all officers of state should be *also approved* by parliament; and, in the intervals of parliament, should be *chosen* by the assent of the major part of the approved council; that the parliament should have the direction of the militia; that all forts and castles should be put under the command and custody of such persons as should be *approved* by parliament; and in the intervals of parliament, under such persons as the major part of the approved council should *approve* (92); that no peers should be made but with *consent* of both houses; that the principal judges should be chosen with *consent* of parliament; and that the justice of *parliament* should pass upon a new and undefined crime called *delinquency* (93). A new great seal was made

(92) The sole right of the king to command the militia, army, and navy, and all places of strength, has been since recognized by the statutes of 13 Cha. II. c. 6. 14 Cha. II. c. 3. and 15 Cha. II. c. 4.

(93) See the nineteen propositions of the house of commons presented to Charles I. on June 2, 1642. Lord CLAR. Hist. Rebel. b. v. p. 493. RAPIN's Hist. of Eng. vol. xi. b. xx. p. 525. HUMPH's Hist. of Eng. c. lv. p. 494.

by the parliament (94). ‘ Whatever was enacted or declared for law by the commons in parliament assembled, was to have the force of law :’ and, not contented with the sole power of making laws, the house of commons boldly declared, they had also the sole power of executing them ; that ‘ the *sovereign* power was *wholly and entirely* in them (95).’ And, as if legislative and executive authority were insufficient, they took away the liberty of the press (96), and were to have judicial power. The *personal liberty* and *property* of the subject were no longer secure. ‘ The same parliament that took such care that no man should be committed

(94) Lord CLAR. Hist. Rebel. b. vii. p. 312.

(95) Ibid. b. vi. p. 68. HARRIS’s Life of Cromwell, p. 210. It is said, that a disposition of this sort was discovered by James I. ; and that once when a committee of the house of commons were to wait upon him, he ordered twelve chairs to be brought, saying, ‘ There were so many kings a coming.’ KENNET, 43. HUME’s Hist. of Gr. Br. vol. vi. c. xlviii. p. 115. RAP. Hist. of Eng. vol. ix. b. xviii. p. 478.

(96) SCOBELL. vol. i. p. 44. 134. vol. ii. p. 88. 230. BLACK. Com. b. iv. c. 11. p. 152.

‘ in

‘ in what case soever, without the cause of
‘ his imprisonment expressed ; and that all
‘ men should be immediately bailed in all
‘ cases bailable ; imprisoned whom they
‘ would, and for what they would, and for
‘ as long time as they would. To be a traitor
‘ (which was defined, and every man under-
‘ stood), was no crime ; and to be called ma-
‘ lignant, which nobody knew the meaning
‘ of, was ground enough for close imprison-
‘ ment. An act of parliament was no longer
‘ necessary to take tonnage and poundage.
‘ The same parliament that declared the pro-
‘ ceedings and judgment upon ship-money to
‘ be illegal and void, enabled four men of
‘ their own faction, on pretence of necessity,
‘ to take away, at their discretion, the twen-
‘ tieth part of the estates of their neigh-
‘ bours (97).’ Not only the justice of *parlia-*
ment was to pass on delinquents, but, find-
ing their new-fangled treasons and usurp-
ations discountenanced by juries, a high
court of justice (*magna charta non obstante*),
composed of their own creatures, was erected.

(97) Lord CLAR. Hist. Rebel. b. vi. p. 80. 86.

In spite of that very petition of right, which had been so strenuously contended for, and recently with so much difficulty obtained, courts martial were preferred to the ancient courts of justice (98). The archbishop of Canterbury lost his life through an ordinance of parliament. The patrimony and the patronage of the crown, and the revenues of the church, were tempting objects; and no artifice was left unemployed to secure them. The possessions, and spiritual as well as temporal jurisdiction of the clergy, were to be taken away (99); the king was put to death; the house of lords was declared 'useless and dangerous (100),' and the kingly office 'dangerous and burdensome (101).' In short, the people presently felt that the whole power of the kingdom, legislative, executive, and judicial, was all transferred into one body,

(98) These extraordinary transactions took place before the protectorship, and before the breach betwixt the parliament and the army. HUME's Hist. of Eng. vol. vii. c. 60. p. 201, 202. RAP. Hist. Eng. b. xxii. p. 8.

(99) Lord CLAR. Hist. Rebel. b. vi. p. 89.

(100) Anno 1648.

(101) Idem.

irremoveable, and uncontroulable. To use the words of lord CLARENDON, the house of commons ‘ assumed to swallow all the rights and prerogatives of the crown, the liberties and lands of the church, the power and jurisdiction of the peers ; in a word, the religion, laws, and liberties of England, in the bottomless and insatiable gulph of their own privileges (102).’ Such a complication of power infallibly produced the most complete tyranny : we were not to have one, but an host of tyrants. A misery so extreme could not, however, long be endured. ‘ Preachers, even before parliament, began to lament, that there was as great pride, as great ambition, as many private ends, and as little zeal and affection in parliament for the public, as they had ever imputed to the court : that all the offices of the army, and all the profitable offices of the kingdom, were in the hands of members of parliament ; who, whilst the nation grew poor, as it must needs do under such unsupportable taxes, grew rich, and would, in a short

(102) CLAR. Hist. Rebel. b. iv. p. 312. fol. edit.

‘ time, get into their hands all the money of
 ‘ the kingdom (103).’ Remorse, secession,
 exclusion, expulsion, purgation, and imprisonment reduced the number of the tyrants; yet still they found the task of government an arduous undertaking. As a legislative body, the number was too few; as the executive power, too many (104). The force of the society being divided and dispersed among many equals, had no longer a power over its own members. The very man, who had ambition to become the leader to oppose and to expel the king, had also ambition, when opportunity served, to oppose and to expel the parliament (105); to cause himself to be made a

(103) CLAR. Hist. Rebel. b. viii. p. 435.

(104) The parliament, at the king’s death, was, by force and violence, reduced to less than an hundred members. RAP. Hist. of Eng. vol. xiii. b. xxii. p. 5. 122. HUME says, that the number, at one time, was *purged*, as it was called, to fifty or sixty. Hist. of Eng. vol. vii. c. 5. p. 131. c. lxi. p. 228.

(105) Before Cromwell actually expelled the parliament, his soldiers roundly told them, they were ‘ men who had
 ‘ lately tasted of sovereignty; and, being lifted up above
 ‘ the ordinary sphere of servants, endeavoured to become masters, and were degenerated into tyrants;’ but ‘ that they (the army) knew how to make themselves
 ‘ as considerable as the parliament.’ Lord CLAR. Hist. Rebel. b. x. p. 34, 35.

king

king in fact, under the name of a Protector; to possess himself of all those powers, which the people had been taught to believe were so dangerous in a king, but which, nevertheless, had been assumed by the parliament; and thus, in effect, possessing the powers of both king and parliament to become a tyrant. Happily, however, 'in proportion as his power became boundless and immense, his security diminished (106);' and he found it was necessary even to a tyrant, to have some appearance of civil rule to support his lawless authority (107). Many attempts were actually made to establish 'some solid and certain course

(106) Sp. L. b. viii. c. 7. 'If the governors be few in number, their power is greater, but their security less; if they are a larger number, their power is less, and their security greater: insomuch, that power goes on increasing, and security diminishing, up to the very despotic prince whose head is encircled with excess of power and danger.' Sp. L. b. viii. c. 5.

(107) 'It is proper in a despotic government, where there is no civil law, that there should be some sacred book to serve for a rule, as the Koran among the Arabs, the books of Zoroaster among the Persians, the Vedam among the Indians, and the Classic books among the Chinese. The religious code supplies the civil one, and directs the arbitrary power.' Sp. L. b. xii. c. 29.

' of

‘ of settlement (108).’ *The agreement of the people, an instrument of government, an humble petition and advice, a committee of safety, plan after plan, succeeded each other. But a radical defect pervaded every project. The boundaries between the legislative, executive, and judicial authority being broken down, not a single fence remained for the preservation of liberty. All this immense power, lodged in a single person, was inevitably productive of tyranny; when vested in a great number, of anarchy also. ‘ When men thought the tyranny confined to one place, it started up again in another; it mocked the efforts of the people, not because it was invincible, but because it was unknown; seized by the arm of a Hercules, it escaped with the changes of a Proteus (109).’ The resolute and violent*

(108) See ‘ A true State of the Case of the Commonwealth of England, &c. in reference to the late established Government by a Lord Protector and Parliament;’ a work which was written by the Protector’s orders, at least with his approbation, and was referred to by him in Parliament for satisfaction concerning his government. Though, claiming to be more perfect than other projects, chiefly because it approached nearer than others to the ancient form of government, with the discerning it must, satisfactorily, have condemned both Cromwell’s and the parliament’s government. HARRIS’S Life of Cromwell, p. 348. 351.

(109) DE LOLME, *Const. Eng.* b. ii. c. 2. p. 216.

hand

hand of Cromwell preserved the nation indeed from the evils of a tumultuary government; but, at his death, when the power devolved upon a person less terrible in his manners (110), all again was anarchy. The republican party resumed their deliberations on the *good old cause*, as they termed it; and as the same causes will produce the same effects, the parliament was dissolved, the new protector was deposed; the parliament was restored, and again expelled (111); and again the government became military (112). Convinced by so many interesting and terrible examples, it was at last discovered, that all the different schemes of republicans were idle speculations, resting on no solid foundation; in practice, always ineffectual, and generally

(110) ‘ When a despotic prince ceases one single moment to lift up his arm, when he cannot instantly demolish those whom he has intrusted with the first posts and employments, all is over; for as fear, the spring of this government, no longer subsists, the people are left without a protector. The Sophi of Persia, dethroned by Mahomet the son of Miriveis, saw the constitution subverted before the revolution happened, because he had been too sparing of blood.’ Sp. L. b. iii. c. 9.

(111) By Lambert.

(112) See NOTE [T].

pernicious;

pernicious; that every change was only a change of tyrants, but never of tyranny; that 'the legislature, by making continual encroachments, and gradually assuming to itself the rights of the executive power (113), had become that very absolute power, without limitation, and without controul, which had been so much dreaded in the sovereign; that the union of the legislative and executive powers was more destructive of liberty, and productive of worse tyranny, in the hands of many persons, than it could be in those of a single individual; that liberty lay in neither of the extremes, which the royalists and the republicans respectively had so zealously contended for; and that the true liberty and interest of the community could only be restored by a restoration of royal authority, and of those powers which, by the constitution of the government, were intended to be vested in the different branches of the legislative and executive authority; by a restoration only of a just *balance* between those powers which ought to constitute the government (114).

(113) BLACK. Com. b. i. c. 2. p. 154.

(114) See NOTE [U].

WHAT

WHAT has been said may convey some idea of the power which had devolved upon the house of commons by the increase of their *numbers*. But their power, perhaps, became no less augmented by an accretion of *wealth*. We are told, that in the time of Charles I. 'their riches were computed to surpass three times that of the house of lords (115).' The dissipation of the church lands by Henry VIII. and the alienation of the crown lands by Q. Elizabeth, made also a great alteration. These measures had a double effect: they weakened the crown, and they strengthened the commons: but, whether they were the cause of the troubles in the succeeding reigns of James I. and Charles I. and indeed ever since, or only contributed to them, the learned must determine.

HUME (116), speaking of the reign of Charles I. says, such was the disposition of those times, that 'even after the event, when it is commonly easy to correct all errors, one

(115) SANDERSON, p. 106. WALKER, p. 339.

(116) Hist. of Eng. vol. vii. p. 147.

‘ is at a loss to determine what conduct, in
 ‘ the king’s circumstances, could have main-
 ‘ tained the authority of the crown, and pre-
 ‘ served the peace of the nation.’

Temp.
 Cba. II.

THE ancient form of government, having
 been happily restored with Charles II. and the
 several enormities which had been complained
 of suppressed, one might have hoped that
 all complaints would have ceased: but it
 happened far otherwise; notwithstanding
 ‘ the constitution had then attained a state
 ‘ of considerable perfection (117)’. The
 learned Writer just cited, after enumerat-
 ing several particulars, concludes, ‘ when
 ‘ we consider likewise the freedom from
 ‘ taxes and armies, which the subject then
 ‘ enjoyed, that the constitution of England had
 ‘ arrived to its full vigour, and the true ba-
 ‘ lance between liberty and prerogative was
 ‘ happily established by *law* in the reign of
 ‘ Charles II.’ He adds, ‘ It is far from my
 ‘ intention to palliate or defend many very

(117) BLACK. Com. b. iv. c. 33. p. 432.

‘ iniquitous

' Iniquitous proceedings, *contrary to all law*,
 ' in that reign, *through the artifice of wicked*
 ' *politicians*, both in and out of employment.
 ' What seems incontestable is this, that *by the*
 ' *law* (118), as it then stood (notwithstand-
 ' ing some invidious, nay dangerous branches
 ' of the prerogative have since been lopped
 ' off, and the rest more clearly defined), the
 ' people had as large a portion of real liberty
 ' as is consistent with a state of society ; and
 ' sufficient power, residing in their own hands,
 ' to assert and preserve that liberty, if in-
 ' vaded by royal prerogative. For which I
 ' need but appeal to the memorable ca-
 ' tastrophe of the next reign. For when
 ' king Charles's deluded brother attempted to
 ' enslave the nation, he found it was beyond
 ' his power : the people both could and did
 ' resist him ; and, in consequence of such

(118) " The point of time at which I would chuse
 " to fix this *theoretical* perfection of our public law is the
 " year 1679, after the *habeas corpus* act was passed, and
 " that for licensing the press had expired ; though the
 " years which immediately followed it were times of
 " great *practical* oppression."

H 2

' resistance,

‘ resistance, obliged him to quit his enter-
 ‘ prize and his throne together.’

BUT let it not be thought from what I have said, that the actions of James I. and Charles I. and II. were either proper or justifiable: on the contrary, I think they were, in many instances, ‘ transgressions of a plain limit, which
 ‘ was marked out to royal authority. But the
 ‘ encroachments of the commons, I conceive,
 ‘ though in the beginning less positive and
 ‘ determinate, are no less discernible by good
 ‘ judges, and have had an equal tendency to
 ‘ destroy the just balance of the constitu-
 ‘ tion (119).’ The truth is, the high notion of the kingly office entertained by the Stuarts, was not suited to the genius of the times; the notion neither of the king (at least in the former part of his reign), nor of the parliament, was suited to the true genius of the constitution.

Temp.
 Will. III.

BUT it was not in the reigns of the Stuarts only, that differences arose between the king

(119) HUME's Hist. of Eng. vol. vi. p. 581.

and

and the parliament. Even in that of our Deliverer, as he was called, king William, we are told, that ‘two parties divided the nation ‘between them (120):’ that the king declared, ‘had he foreseen the returns which ‘he received for his services, he would never ‘have meddled with English affairs; that he ‘was weary of governing a nation, who, ‘through their jealousy of the crown, exposed their sovereign to contempt, and ‘themselves to danger (121):’ ‘that he would ‘no longer remain in a country where he ‘only enjoyed the name of a king (122):’ ‘that he had actually formed a resolution of ‘abandoning the kingdom, and had prepared ‘a speech for that purpose (123):’ that, though elevated to regal dignity by the whigs, the opposition from the tories made in time so strong a head against all his measures, that he thought ‘the tories only were capable of ‘carrying forward, with facility, the public

(120) MACPHERSON’S Hist. of Gr. Br. vol. ii. p. 228.

(121) Ibid. p. 143.

(122) Ibid. vol. i. p. 611.

(123) Ibid. vol. ii. p. 160.

‘ business (124);’ and he accordingly changed his ministry, and displaced the ‘ lord chancellor Somers, who was considered as the head of ‘ the whigs.’ Yet, as has happened in other times, of so little account was the power of the king, that those who prevailed ‘ preferred ‘ the influence of their party to the countenance of their prince (125):’ and the king was compelled again to change his ministry, resolving, for the future, as he was obliged to chuse one party, ‘ to place his whole confidence in that of the whigs (126).’

BESIDES the alterations before mentioned, some principal ones took place, by which the representatives of the people augmented their power,

NONE of the least was that of restraining the king’s authority, in his legislative capa-

(124) MACPHERSON’s Hist. of Gr. Br. vol. ii. p. 182.

(125) Ibid. p. 219.

(126) Ibid. p. 219. According to RAPIN, king William was obliged ‘ *often to change sides.*’ Hist. Eng. vol. xiv. Dissert. on Orig. of Govern. p. 441.

city, to a simple affirmative or negative. Now, any the least interference of the crown, whilst a matter is pending in parliament, would be considered as a great breach of privilege. Even the name of the king is not permitted to be mentioned in debate.

BUT it is not the power of the *crown* only which has been reduced in the legislature, a considerable diminution of power has also taken place in the *house of peers*. All grants of subsidies, or parliamentary aids, must now begin, and be first bestowed by the lower house of parliament. If the members of the upper house should pretend to make the least alteration in any grant which is brought for their concurrence, the bill, when returned, would literally be kicked out of doors by the commons (127). The power of the house of lords, as *legislators*, is therefore greatly reduced. Though possessed of so large a share of the property upon which taxes are to be raised, they are not even

(127) See NOTE [V].

allowed the privilege of *constituents* (128): their interference at the election of the commons, would be thought a breach of privilege. So that the commons, having ultimately established a right to command the purse, the common medium for the exchange of all things, the command of every thing, in a manner, has in consequence devolved upon them.

ANOTHER important point gained by the popular over the regal authority, has been, to obtain what DE LOLME calls the *initiative* in legislation, or the right of *proposing* or *originating* laws as well as taxes, and to exclude the monarch from exercising that power;

(128) It is natural to suppose, that the reason of their being denied this privilege, arose from the feudal law. The great barons representing their tenants, contributed not to the wages of those that represented the inferior tenants *in capite*. And, therefore, as they bore not the burden, they were not to enjoy the privilege of electors. *Qui sentit commodum, sentire debet et onus*. It must, nevertheless, be acknowledged, that HUME (Hist. of Gr. Br. vol. vi. p. 461.) seems to think the interposition of the *peers in the election* of commoners, was first declared a breach of privilege in the reign of Charles I.

by

by which means, the commons have acquired a privilege of proposing laws, not only concerning the judicial power, the administration of civil and criminal justice, but to abolish or abridge any prerogatives of the executive power which may be thought injurious; whereas, on the other hand, the king in person, and very properly considering the magnitude of royal authority, has no power to propose any law, either to abolish or abridge the privileges of the house of commons: the commons may act in the offensive, the king can only defend.

AND let us not forget the long strides that have been taken towards aristocratic power, in the several changes that have been made from annual to triennial, from triennial to septennial parliaments.

C H A P. VII.

The Consequences attending the Power which may be assumed by the House of Commons.

AND, lastly, the statute of 12 Cha. II. c. 24. having finally abolished the feudal tenures, with all their slavish consequences, which formerly used to increase the splendor of the throne, and, at the same time, to keep the inferior land-holders in subjection to the lords they held under; let us see what may now be the *power* of the house of commons.

JAMES I. in preferring Sir John Saville, laid a sure foundation for opposition to the measures of the crown; and the subsequent impeachment of the earl of Middlesex in the same reign, and in the next that of the earl of Strafford, seem to have ensured its success. By the first, opposition is inspired with hope; by the last, any minister must be dismayed with fear.

BILLS respecting the *personal liberty of individuals* may be passed quietly ; but if they relate to the necessary requisites for giving energy to the *measures of government*, they have too often met with a violent opposition.

THE present times, it is to be hoped, are an exception to such conduct. In so momentous a concern, however, it may behove the people to be upon their guard against every possible danger.

NUMEROUS connections may be united, and grow into a powerful and formidable faction ; *private views* may supplant all *public virtue*, and no one avenue to *power* be left unattempted. A party, perhaps, may try to *seize upon government* ; and, if very considerable, the several members of it may begin to consider themselves as invested with royal power, or, at least, intitled to hold the supreme magistrate in tutelage. In comparison of this important object, they may look upon the privilege of proposing laws, and inquiring into the execution of them ; of granting money, and the administration of it, as matters

of

of trifling concern. These events, it is hoped, are yet at a great distance. But if it should ever be the lot of this country to endure so hard a fortune, it may be of use to the present generation, in order to guard against the approach of so great an evil, to take a short view of its prognosticks. They seem to be these. Should the debates in parliament be constantly carried on with heat and animosity, and every measure of government be opposed and thwarted ; should a faction garble the debates for publication, and editors of newspapers be taken into pay ; should every ministry, without exception, and without any one direct and specific charge brought against them, be grossly abused and calumniated ; should the true principles of government, the sound maxims of policy, and the real interests of the community, be lost in the eager pursuit of private interest or ambition ; should men, because they are of a particular party, or possessed of talents for debate, though endowed only with superficial abilities, be sought for, in preference to persons of real knowledge and integrity, and even brought from other countries

countries to fill the family boroughs ; should eloquence, the great engine of faction, be considered of the same importance as in the days of Cicero, when Rome lost her liberty ; and venality or corruption (1) (which is indeed the inseparable companion of faction) become equally prevalent ; should lawyers, because in the habit of public speaking, be brought into both houses of parliament ; and even the highest offices in the law be bestowed, not so much on account of merit in the profession, as of certain conduct or connections in parliament ; should the qualification required for members to sit in parliament be evaded, and instead of wages being paid by the electors, the most corrupt bribery be practised upon them.

SHOULD the supreme magistrate be deprived of many of his prerogatives ; should a cabal be able to force him to take into his service, political, maritime, and military, men utterly disagreeable to him ; and the order of things be inverted, and instead of command-

(1) See NOTE [W].

ing, he himself be obliged to obey ; should he be compelled to grant *places, pensions, and honours*, to the very men that have treated him with indignity ; should those who have been distinguished by the royal favour, appear at public meetings to do things known to be offensive to their sovereign ; should faction, as in the times of Charles I. call in to their aid inflammatory petitions and inflammatory motions in parliament ; and even the king's own ministers openly attempt to subvert his authority.

SHOULD the inquisitorial power draw every branch of the executive authority into the house of commons, and the inquisitorial consequently become the executive power ; should the royal prerogative be barely *nominal*, and *actually* performed by the ministry ; and the ministry, awed by the terror of impeachment, or of clamorous and pertinacious invective, become afraid of exercising their functions, and the *choice* of the ministry, and the *direction* of their conduct *virtually* devolve upon the house of commons ; and that power, which was designed to watch and impeach
any

any misconduct in the administration, become, in effect, the administration itself, and the inquisitors of *its own* conduct.

SHOULD the public councils, depending upon the fluctuating strength or weakness of contending parties, become fluctuating also; and in order to give some stability to government, some members be brought into *place*, and others, going out, be gratified with *pensions*; should *prodigality* universally prevail (2), the public accounts, year after year, remain unsettled; every minister, and every parliament prove unwilling to correct this or any other abuse of trust in relation to the public

(2) The following facts, if true, will give some idea of our increasing prodigality, since the reign of Q. Anne, and the passing of the septennial act in 1715. For ten years, ending Aug. 1, 1717 (a period comprehending in it a general war abroad, and the demise of the crown, the establishment of a new family, and an open rebellion at home), the money expended in secret services amounted only to 279,444l. For ten years, ending Feb. 11, 1742, it amounted to no less a sum than 1,384,600l.; of which 50,077l. was paid to printers of newspapers, and writers for government; and a greater sum expended, in the last *six weeks* of these ten years, than had been spent in *three years* before Aug. 1710.

money;

money ; defaulters and peculators be connived at and protected ; and few men appear desirous to lessen the fund, of which most might hope to be partakers, and the *national debt* be increased with loss and disgrace to the nation.

SHOULD a party, in opposition to ministry, raise a violent out-cry, and threaten impeachments ; and to appease them, should the king change his ministry ; should change succeed change, but all changes of men cause little or no change in measures ; and in whatever hands, this party or that party, whig or tory, the nation receive no real advantage.

SHOULD the national *force* become feeble and unsuccessful, and its councils so fluctuating, that no nation would enter into alliance to assist us ; should those things which ought to be transacted *secretly*, be discussed publicly, and in consequence almost every scheme be frustrated ; should debate and delay take place of *decision* and *dispatch*, our enemies be put upon their guard, and the most favourable opportunities for public advantage and honour irretrievably lost.

I SAY,

I SAY, should such things unfortunately happen, we may again, perhaps, as in the time of Charles I. find a set of men forward to erect themselves into a formidable party; and bold enough to declare, that their practices are constitutional; and that the nation can only be governed by some great and powerful party, or what they may call a *coalition* or *connection* of parties. Such times, it is hoped, are yet far remote: but whenever they arrive, if they shall ever happen, let it be considered, whether, when ‘the strength of the state has become only the power of private citizens (3),’ the constitution would not be lost? whether, if our force were divided, it might not be easily broken; and foreign and domestic enemies alike overpower the strength of the nation? and whether it could ever be advisable to ANNIHILATE monarchy, for a system of government, which promises a want of *uniformity* of conduct, and consequently of *allies*; a want of *secrecy*, *unanimity*, and *decision* in resolving; and of *dis-*

Deduction from the premises, how dangerous it might be to annihilate monarchy.

(2) Sp. L. b. iii. c. 3.

patch, strength, vigour, and consistency in execution (and without these circumstances, no *protection* can be afforded); and which, finally, making that *mercenary* which ought to be *honorary*, encourages *parties*, incites *faction*, and promotes *profusion*.

WHENEVER these things shall come to pass (if unhappily for us they ever do come to pass), and the nation shall enjoy neither the *strength* of monarchy, nor the *virtue* of democracy, we may be assured such will be certain signs that the principles of government are corrupted (4); and we need not wonder, if our dominions at a distance be lost, or those nearer home revolt; that disturbance prevail in every quarter; and, in a mart so plentifully stored with preferment, so great a traffic be carried on for places and pensions; in a word, that the

(4) The learned Author of the Spirit of Laws describes many other marks of the corruption of the principles of government, which an *attentive* Reader will easily apply to what happened in the reign of Charles I. when the house of commons totally lost that '*virtue*, which endeavours always to pursue the real interest of the community;' and the king lost that *power*, which is necessary to carry on the business of the government.

profits and emoluments of a rich and noble kingdom, like the spoils of a conquered country, be divided among the very persons, to whom it looks, in vain, for security and protection.

IN former times, when the nation was divided into different parties, court and country, roundheads and cavaliers, petitioners and abhorers, whigs and tories, royalists and republicans, each side carrying their opinion to excess; violent tories were for absolute monarchy, violent whigs for no monarchy at all, but a democracy only; and, as a humorous writer states it, that between two thieves, whig and tory, the nation was crucified (5).

At length, both parties were convinced by bitter experience, that either extreme was pernicious. The royalists discovered, that absolute monarchy was *tyranny*; the republicans, that a democracy was tyranny and anarchy both (6). No longer governed by

(5) BURGH's Pol. Disq. vol. i. p. 402.

(6) Lord BOLINGBROKE's Dissert. on Parties, p. 208.

passion, reason resumed her seat; each side relaxed from the rigidity of their former principles; and, instead of sacrificing their *country* to their *party*, they agreed, at the Revolution, to sacrifice their *party* to their *country* (7). The two parties were to be melted, as it were, into one (8). The cause of liberty was not to be built on the narrow mean basis of *party*, but on the broad solid foundation of the *public good*. The odious distinction of whig and tory was to cease; and we were to enjoy the benefit of the monarchical as well as the democratical branch of the constitution.

LET us then follow the example set at the Revolution. Let us not attempt to subvert; let us rather use our endeavours to support the constitution; ‘ a noble fabric, the pride
‘ of Britain, the envy of her neighbours,
‘ raised by the labour of so many centuries,
‘ repaired, at the expence of so many millions,
‘ cemented by such a profusion of blood (9);’

(7) BOLINGBROKE's Dissert. on Parties, p. 208.

(8) Ibid. p. 116.

(9) Ibid. 151.

and which has stood the siege of so many ages, and so many adversaries, domestic and foreign.

LET us improve upon the plan established at the Revolution. Let us not only prevent the *crown* from doing *harm*, but enable it to do *good*. Let us give due weight to the house of commons, but let it not be such as to destroy the balance of the constitution. Let us more strongly confirm two of the first principles of the government, by endeavouring to procure *strength* for the *monarchical* power, and *virtue* for the *democratical*.

B O O K II.

Of the Caution which seems to be necessary in *reducing*, either the *Prerogative*, or the *Influence*, of the Crown.

Ever since the conquest, the power of the crown has been diminishing.

MORE than seven hundred years have elapsed since the conquest; and from that period, every improvement of the constitution, which has been proposed, seems generally, in some shape or other, to have had in view the reducing of the power of the crown.

LET us then see what is really the royal authority after all its encounters.

The royal authority, at present, in *ecclesiastical* concerns;

IN *ecclesiastical* concerns, which formerly used to be so much revered, and to carry so much authority, the king is the supreme head of the church; but he cannot make the least alteration in the established religion. By
the

the bill of rights (1), obtained at the Revolution, he cannot ' profess the Popish religion, ' or marry a Papist ;' but by the act of settlement (2), must ' join in communion with ' the church of England.' And the bill of rights having declared the commission for erecting the court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, to be illegal and pernicious, he cannot even question the opinion of others.

IN matters of *revenue*, he has no power in matters of *revenue* ; at all. He can compel nothing, he can require (3) nothing, but what is voluntarily granted to him. By the bill of rights, to levy money, without grant of parliament, is illegal. It is true, the king can coin money, but he cannot alter the standard. ' In a word, the ' royal prerogative, destitute as it is, of the ' power of imposing taxes, is like a vast body

(1) 1 Wil. & Mary, sess. 2. c. 2.

(2) 12 & 13 Wil. III. c. 2, s. 3.

(3) See NOTE [X].

‘ which cannot of itself accomplish its own
 ‘ motions ; or, if you will, it is like a ship
 ‘ completely equipped, but from which the
 ‘ parliament can, at pleasure, draw off the
 ‘ water, and leave it aground—and also set
 ‘ it again afloat, by granting subsidies (4).’

a military
 affairs;

IN *military* affairs, which in some govern-
 ments bear so mighty a sway, the king is the
 generalissimo ; but the bill of rights declares
 it to be unlawful to raise or keep a standing
 army without consent of parliament, but that
 the protestant subjects may have arms for
 their own defence. And as a further security,
 the mutiny act, and the pay (5) for the army are
 never granted for a longer time together than
 one year ; at the end of which it is of course
 in the power of any one of the three branches
 of the legislature to dissolve the army. This
 instrument of defence, which ‘ the circum-
 ‘ stances of modern times have caused to be
 ‘ judged necessary, being capable of being

(4) DE LOLME, *Const. of Eng.* b. i. c. 5. p. 76.

(5) The land tax and malt tax.

‘ applied

' applied to the most dangerous purposes, has
' been joined to the state by only a slender
' thread, the knot of which may be slipped
' on the first appearance of danger (6)'.

IN a *judicial* capacity, which has some- in a *judicial*
times been used as an engine of terror, he capacity ;
may be called the chief magistrate. The
judges, sheriffs, and justices of the peace derive
their authority from him ; but he cannot in-
terfere in any trial. James I. (7), assisting at
the trial of a cause, was reminded by the
judge, that he could deliver no opinion. Since
that time, the act of parliament for taking
away the court of star-chamber, has expressly
declared, ' That neither his majesty, nor his
' privy council, have, or ought to have, any
' jurisdiction, power, or authority, by Eng-
' lish bill, petition, articles, libel, or any
' other arbitrary way whatsoever, to examine
' or draw into question, determine, or dispose
' of the lands, tenements, hereditaments,

(6) DE LOLME, Const. of Eng. b. i. c. 8. p. 91.

(7) Ibid. b. i. c. 8. p. 88.

‘ goods or chattels, of any of the subjects of this kingdom ;’ but that the same ought to be tried and determined in the ordinary courts of justice, and by the ordinary course of law (8). And the bill of rights declares the power of *suspending* and *dispensing* with laws, formerly assumed by the crown, to be illegal. It is true, the monarch is invested with a power of pardoning offenders, where, from the universality of the law, a literal exposition of it, under certain circumstances, might prove too rigid ; but by the act of settlement (9) in *parliamentary impeachments*, where it is possible the king himself might be concerned, a pardon cannot be pleaded.

in the *legislature*;

IN the *legislature*, where the sovereign power resides, and where the personal interference of the monarch might carry too great an influence, though reckoned the first of the three branches of the legislature, he can propose no alteration in any bill, either while it

(8) 16 Cha. I. c. 10. f. 5.

(9) 12 & 13 Wil. III. c. 2. f. 3.

is passing through the two houses of parliament, or when it is presented for his assent; but he is confined to a simple affirmative or negative. He cannot enter into debate with his parliament; but, on the contrary, the bill of rights has secured freedom of debate in the proceedings of parliament. He can *call* a parliament when he pleases; but, to prevent surprise, the writs must issue, except in case of rebellion or invasion (10), forty days before its meeting; he can *prorogue* the parliament to what time he pleases, but by the statute of 16 Cha. II. c. 1. parliaments must not be intermitted or discontinued above three years. And the bill of rights requires further, that parliaments ought to be *held frequently*; but this is now become a nugatory provision, since the crown has been deprived of raising either a revenue or an army, but by annual grant of parliament. He may *dissolve* the parliament when he pleases, but it must not continue longer than seven years.

(10) *Magna charta* of K. John, c. 14. 16 Geo. III. c. 3. s. 2.

as the *supreme executive magistrate*.

As the *supreme executive magistrate*, he appoints all the next immediately subordinate ministers and officers under him, ecclesiastical, civil, political, maritime, and military; but by the statute of 6 Anne, c. 7. s. 27. a greater number of commissioners for executing any office than usual, cannot be appointed. He is also the fountain of *honour*, whence all titles and dignities flow; and which, in a simple and not a mixed monarchy, is described by MONTESQUIEU (11), as the sole principle of government. He is the grand representative of the majesty of the nation to foreign countries (12), and has the prerogative to send and receive ambassadors, make alliances, enter into treaties, declare war, and make peace. But it is to be observed, that by the bill of rights it is declared, 'that it is the right of the subject to petition the king, and all commitments and prosecution for such petitioning are illegal;' and what is still more advantageous, all ministers and officers, ecclesiastical, civil, political,

(11) Sp. L. b. iii. c. 6.

(12) See NOTE [Y].

• maritime,

maritime, and military, who have the *actual* management of affairs, are liable to impeachment, and answerable with their lives for their conduct.

BUT it will be said, it is not now *prerogative*, but *influence*, that is complained of.

Not prerogative, but influence, that is complained of.

It is true, the patronage of the crown has of late greatly increased; but, may it not be a question, whether the increase of the national debt, from whence the patronage arises, has not augmented the power of the commons, as much as that of the crown? Formerly, ‘the majesty of the crown, derived from ancient powers and prerogatives, procured respect; and checked the approaches of insolent intruders (13);’ and the expence of government was so small, the kings of England could, by means of the royal demesnes (14), the fruits and incidents of the feudal tenures (15), and various prerogatives, carry

Effect of patronage.

(13) HUME's Hist. of Eng. vol. vi. p. 580, 581, note [Z].

(14) See NOTE [Z].

(15) See NOTE [AA].

on the administration of the government for years together, without any aid from parliament. But now the feudal tenures are abolished, and the ancient revenues, and all the powers and prerogatives by which any revenue can be raised, being reduced to a state of insignificance ; and debts and demands continually accruing, which only annual taxes are granted to satisfy, the ancient dignity of majesty is reduced (and some reduction it might, perhaps, require) to the humiliating condition of an annual dependence upon parliament (16) : so that even the national debt, which is supposed so much to have exalted the

(16) ‘ In the ancient constitution, before the beginning of the seventeenth century, the meetings of parliament were precarious, and were not frequent. The sessions were very short ; and the members had no leisure, either to get acquainted with each other, or with public business. The ignorance of the age made men more submissive to that authority which governed them. And above all, the large demesnes of the crown, with the small expence of government during that period, rendered the Prince almost independent, and taught the parliament to preserve a great submission and duty towards him.’ HUME’s Hist. of Eng. vol. vi. p. 580, note [Z].

monarchical

monarchical power, has, perhaps, more increased the overgrown power of the house of commons.

It is surely without reason we are at this time alarmed with such mighty ills from the Crown; especially under a monarch, of whom it has been said, with great propriety, that, 'if there be a patriot in the country, he is now upon the throne (17).' The Crown is now so restricted, scarcely a possibility is left of its doing harm. It is its interest, it must naturally be its inclination, to do good.

No reason for any alarm from the Crown.

BUT it is suggested (18), that the Crown may effect 'the most pernicious measures against the sense of the incorrupt part of the legislature, and the wishes of the Public.' By way of answer to this charge, let us take a short retrospect of our history from the commencement of the reigns of the Stuarts; who,

Charge that the Crown may effect the 'most pernicious measures,' refuted.

(17) Mr. SMALT's Speech at York; Dec. 30, 1779, p. 25.

(18) By the York Association,

with

with these reasoners, are probably looked upon as the most obnoxious of our princes.

Instance of
James I.

JAMES I. though he began the practice of advancing men on account of their opposition to him, could not effect 'the most pernicious measures.'

—Charles I.

CHARLES I. though armed with many powerful prerogatives, every one of which was called into action, was obliged to consent to the petition of right, and to abolish martial law, together with the two courts of star-chamber and high commission. And, at last, the disputes in his reign, we know, cost him his life: it seems, therefore, idle to talk of this prince being able to effect 'the most pernicious measures.'

—Charles II.

RAPIN (19), in his History of the Reign of Charles II. gives strong reasons to shew, what, he says, 'had been assured by many authors, that scarcely one member of the house of commons, however inconsiderable,

(19) Hist. of Eng. vol. xliii. b. 23. p. 446.

‘ was without a pension from that king, in
‘ proportion to the influence he had in the
‘ house ; and that these pensions were in-
‘ creased according to the sums granted to
‘ the king.’ Yet even this king, notwith-
standing all this mighty power, and though
the dire effects of a commonwealth were still
fresh in every one’s remembrance, and it
was therefore more likely the nation would
have run into the extreme of absolute mo-
narchy ; I say, even he granted the *habeas*
corpus act ; was not able to prevent a bill be-
ing carried through the house of commons, to
exclude his brother and presumptive heir
from the throne ; and if he had not had the
power to dissolve his parliament, perhaps he
himself had been dethroned.

AND though this bill miscarried in the —James I
house of peers, and James II. ascended the
throne ; when it was found he adhered to
the same destructive principles which he had
formerly discovered, notwithstanding he had
a clear and independent revenue granted him
of more than two millions sterling *per an-*

K

num,

num (20), had augmented the army to thirty thousand men (21), and had officered them with Roman catholics on whom he thought he could thoroughly depend (22), he soon found himself deserted, standing exposed a single individual in a great nation, and was forced to abdicate the government.

—WILL. III.

As to king William III. who granted the *bill of rights*, and the other princes since the Revolution, it is imagined it will scarcely be contended, that, during *their* reigns, there has been much occasion to complain of ‘the most pernicious measures.’ We have, however, an *high* authority, that of a *great* association in Yorkshire, that the ‘two *first* princes of the Hanoverian line NEVER exceeded the limits of the law (23).’

—Geo. I, II,
and III.

WITH respect to his present majesty, it would be ungenerous, one may say ungrate-

(20) Dr. SQUIRE on the Anglo-Sax. Gov. p. 373.

(21) STUART'S View of Soc. in Europe, p. 139.

(22) Dr. SQUIRE on the Anglo-Sax. Gov. p. 374.

(23) 2 Yorksh. Assoc. address 5.

ful, without being able to allege one *single* instance of his inclination to pursue 'the most 'pernicious measures,' to exhibit, or to insinuate, in the most distant manner, a charge, in *general* terms, of so odious a nature; well knowing that he has given the most unequivocal proofs of his solicitude for the public welfare, in various public acts; namely, the act (24) for setting bounds to the civil list (25), and placing the administration of that revenue in hands that are accountable to parliament (26); the act (27) for making the judges completely independent; the act (28) for restraining certain officers of the revenue, supposed to be under the influence of the crown,

(24) 1 Geo. III. c. 1.

(25) 'The expences defrayed by the civil list are 'those that in any shape relate to civil government; as 'the expences of the household; all salaries to officers of 'state, to the judges, and every of the king's servants; 'the appointments to foreign ambassadors; the maintenance of the queen and royal family; the king's private 'expences, or privy purse; and other very numerous 'out-goings; as, secret service money, pensions, and 'other bounties.' BLACK. Com. b. i. c. 8. p. 331.

(26) See NOTE [BB].

(27) 5 Geo. III. c. 47. s. 10.

(28) 22 Geo. III. c. 41.

from voting at elections of members of parliament; the act (29) for excluding from the house of commons certain contractors, supposed too to be under the same influence; the act (30) for suppressing certain offices payable out of the revenues of the civil list; the *nullum tempus* act (31); the acts (32) for regulating the trials of controverted elections; and, perhaps, in many other instances which, at present, do not occur, and, it may be, were never known to me.

Check upon the executive power, if any prince should be so imprudent as to attempt any arbitrary measure.

BUT should we unhappily ever meet with a prince, whom neither inclination nor interest would keep to his duty, the awful example of those who have been weak or wicked enough to 'exceed the limits of the law,' must speak with an hundred tongues. After such examples, there can surely be little reason to fear from a king any violation of

(29) 22 Geo. III. c. 45.

(30) 22 Geo. III. c. 82.

(31) 9 Geo. III. c. 16.

(32) 10 Geo. III. c. 10. 11 Geo. III. c. 42. 14 Geo. III. c. 15.

our liberties, which an independent and virtuous representation in parliament might not readily cause to be remedied.

SHOULD, however, any prince be so weak or daring as to make the attempt, the constitution has provided a remedy. ‘ At the end of every reign, the civil list, and consequently that kind of independence which it procured, are at an end. The successor finds a throne, a sceptre, and a crown; but he finds neither power, nor even dignity; and before a real possession of all these is given him, the parliament have it in their power to take a thorough review of the state, as well as to correct the several abuses that may have crept in during the preceding reign; and thus the constitution may be brought back to its first principles.

He need even
if he should
succeed.

‘ ENGLAND, therefore, by these means, enjoys one very great advantage, one which all free states have sought to procure for themselves; I mean, that of a periodical reformation. But the expedients which legislators

have contrived for this purpose in other countries, have always, when attempted to be carried into practice, been found to be productive of very disadvantageous consequences. Those laws which were made in Rome, to restore that equality which is the essence of a democratical government, were always found impracticable ; the attempt alone endangered the overthrow of the republic ; and the expedient, which the Florentines called *ripigliar il stato*, proved nowise happier in its consequences. This was because all those different remedies were rendered inefficient beforehand, by the very evils they were meant to cure ; and the greater the abuses were, the more impossible it was to correct them.

‘ BUT the means of reformation which the parliament of England has taken care to reserve to itself, is the more effectual, as it goes less directly to its end. It does not oppose the usurpations of prerogative, as it were, in front ;—it does not encounter it in the middle of its career, and in the fullest flight of its exertion ; but it goes in search of it to its source,

source, and to the principle of its action. It does not endeavour forcibly to overthrow it, it only enervates its springs.

‘ WHAT increases still more the mildness of the operation is, that it is only to be applied to the usurpations themselves, and passes by, what would be far more formidable to encounter, the obstinacy and pride of the usurpers.

‘ EVERY thing is transacted with a new sovereign, who, till then, has had no share in public affairs, and has taken no step which he may conceive himself bound in honour to support. In fine, they do not wrest from him what the good of the state requires he should give up: he himself makes the sacrifice.

‘ THE truth of all these observations is remarkably confirmed by the events that followed the reign of the two last Henrys. Every barrier that protected the people against the incursions of power had been broke through. The parliament, in their terror, had even enacted that proclamations, that is, the

will of the king, should have the force of laws (33). The constitution seemed really undone. Yet, on the first opportunity afforded by a new reign, liberty again began to make its appearance (34).'

AND (to say nothing of the petition of right in the 3d of Charles I.), when a great mass of abuses had, for many reigns, been accumulating and gaining strength, and the ancient laws were restored in the persons of William and Mary, we find them all, at least all that were required, in a moment removed by the bill of rights, passed in the first year of their reign.

Reasonable
retrenchment
of preroga-
tive seldom
refused.

WHAT occasion then for such mighty fear? Has parliament almost ever required any reasonable retrenchment of the prerogative, which the Crown has refused? Whenever

(33) Stat. 31 Hen. VIII. c. 8.

(34) DE LOLME, Const. Eng. b. i. c. vi. p. 80. 4th edit. The laws concerning treason passed under Henry VIII. which judge BLACKSTONE calls "an amazing heap of wild and new-fangled treasons," were, together with the statute just mentioned, repealed in the beginning of the reign of Edw. VI.

reason

reason has declared herself, has not the most stubborn power of the Crown, even in the lifetime of those who exercised it, in innumerable instances, constantly given way? To express the idea in a few words, may we not say, with Monf. DE LOLME, 'That it is *impossible* but that well-grounded complaints will sooner or later be redressed (35).'

WE have seen the use of a king in many instances; the last, though not the least, is to break the confederacies of contending parties (36). Happily, so far, his present majesty has been able to perform that salutary service. But who can tell how long such ability may continue! With every fresh ministry, fresh difficulties seem to arise. But if, by yielding, he should always be able to ward off the *blow*, who knows that his suc-

Uses of a king besides several before mentioned.

(35) DE LOLME, Const. Eng. b. ii. c. 14. p. 314-4th edit.

(36) 'In a *monarchy*, feuds and divisions are easily quieted, because the prince is invested with a coercive power to curb both parties; but they are more lasting in a *commonwealth*, because the evil generally seizes the very power which only could have wrought a cure.' MONTESQUIEU on the Rise and Fall of the Roman Empire, p. 29.

cessors,

cessors, to humours equally capricious, will be equally pliant! Or if they should, and their authority should become every day more relaxed, who then must break the confederacies of contending parties, and ward off the blow which they threaten?

Caution necessary in reducing monarchical power.

Example of Sweden;

LET, therefore, every proposal for reducing the monarchical power be well considered. Mr. DE LOLME (37) tells us, that ‘ when the crown of Sweden was, in the ‘ first instance, stripped of all its different ‘ prerogatives, it does not appear, that those ‘ measures were effected by sudden, open ‘ provisions for that purpose: it is very probable they had been prepared by indirect ‘ regulations formerly made; the whole tendency of which scarcely any body, perhaps, ‘ could foresee at the time they were framed,’

‘ WHEN the senate assumed the power of granting offices and employments, civil and military; of conferring the honour of nobi-

(37) Const. Eng. b. ii. c. 19. p. 506, 4th edit.

lity; of calling and dissolving the senate; of engaging in war; making peace, and entering into treaties; and of pardoning offenders: so universal was the hatred of the people against the tyrants that governed them, that even an absolute monarchy was accounted a blessing, and was effected without bloodshed,

So our own country furnishes a lesson, —of our own country. that the commons may advance progressively, until they *seize* the whole sovereign power. Their power in former times is sufficiently manifested, when we recollect, that they have dethroned and put to death one monarch, and made another to abdicate; that they have declared the house of lords to be useless and dangerous; and have compelled their own ordinances alone to be taken for laws. In the reign of Q. Elizabeth, arbitrary and violent as she was, individuals, in general, were happy. But when republican notions destroyed the monarchy, the very reverse was experienced. Monarchy destroyed, the aristocracy, nay, the democracy itself soon followed;

lowed (38); civil liberty was no more; the severest tyranny was established. After about twenty years woeful experience, a restoration of monarchy was effected without any limitation of the monarchical power; and, as lately in Sweden, not only without blood-

(38) Charles I. in his answer to the nineteen propositions made by the parliament, seems to have written of this and some other things which happened, in the spirit of prophecy: His words are worth transcribing: 'The second estate [the nobility] would,' says he, 'in all probability, follow the fate of the first [the king]; and by some of the turbulent spirits, jealousies would soon be raised against them, and the like propositions for reconciliation of differences would be then sent to them, as they now have joined to send us, till (all power being vested in the house of commons, and their number making them incapable of transacting affairs of state with the necessary service and expedition, those being retrusted with some close committee), at last, the common people (who, in the mean time, must be flattered, and to whom licence must be given in all their wild humours, how contrary soever to established law, or their own real good) discover this *arcanum imperii*, that all this was done by them, but not for them, and grow weary of journey-work, and set up for themselves; call parity and independence liberty; devour that estate which had devoured the rest; destroy all rights and properties, all distinctions of families and merit; and by this means, this splendid and excellently distinguished form of government, end in a dark equal chaos of confusion, and the long line of our many noble ancestors, in a *Jack Cade*, or a *Wat Tyler*.' RAPIN's Hist. of Eng. vol. xi. b. 20. p. 550. 8vo edit.

shed,

shed, but with the most joyful and universal acclamation; infomuch that Charles II. when he came to the throne, observed, ‘ he saw ‘ nobody that did not protest he had ever ‘ wished for his return (39).’

AND what is worthy of remark, all this happened in a reign, when, as the law then stood, the power and prerogatives of the Crown were much greater, and the power of the house of commons much less, than at present.

The power of the monarch greater formerly than at present.

No private virtues, no concession of the prince were able to stop the torrent of their encroachments. The people were appealed to; the mask of patriotism covered the most dangerous designs. Specious pretences deceived multitudes. Until, at last, ‘ by absurd ridiculous lying, used to win the affections, and corrupt the understandings of ‘ the weak; bold scandals to confirm the wilful; boundless promises to the ambitious; ‘ and gross, abject flatteries, and applications ‘ to the vulgar spirited; and a supine laziness,

(39) Lord CLAR: Hist. Rebel. b. xvi. p. 602. fol. edit.

‘ negligence,

‘ negligence and absence of those who had
 ‘ assumed their country’s trust, a handful of
 ‘ men, much inferior in the beginning, in
 ‘ number and interest, came to give laws to
 ‘ the major part (40),’ and overturned the
 constitution.

Caution.

‘ THOSE persons who think that the pre-
 rogative of a king cannot be too much
 abridged, and that power loses all its influ-
 ence on the dispositions and views of those
 who possess it, according to the kind of name
 used to express those offices by which it is
 conferred, may be satisfied, no doubt, to
 behold those branches of power that were
 taken from a king, distributed to several bo-
 dies, and shared in by the representatives of
 the people. But those who think that power,
 when parcelled and diffused, is never so well
 repressed and regulated, as when it is con-
 fined to a sole indivisible seat, that keeps the

(40) Lord CLAR. Hist. Rebel. b. iv. p. 253. Mrs.
 MACAULAY, in her Hist. of Eng. vol. v. p. 112, says,
 that Cromwell succeeded in his usurpation upon par-
 liament, by exactly the same means, ‘ by alarming the
 ‘ fears, rousing the resentments, flattering the wishes,
 ‘ and cajoling the prejudices of the major part !’

nation united and awake ; who know that names, by no means altering the intrinsic nature of things, the representatives of the people, as soon as they are invested with independent authority, become *ipso facto* its masters : those persons, I say, will not think it a very happy regulation, in the former constitution of Sweden, to have deprived the king of prerogatives formerly attached to his office, in order to vest the same, either in a senate, or in the deputies of the people ; and thus to have trusted with a share in the exercise of the public power, those very men, whose constitutional office should have been to watch and restrain it (41).'

YET the same thing happened on the expulsion of the kings from Rome, as we find in DIONYSIUS of HALICARNASSUS, and LIVY. The very powers exercised by the kings, and which the senate had so much complained of, the senate themselves assumed. The execution of their decrees, indeed, they intrusted to two magistrates, called *consuls* ; but those

(41) DE LOLME, *Const. of Eng.* b. ii. c. 19. p. 504. 4th edit.

magistrates were taken from the body of the senate, and were entirely dependent upon them. ‘ Masters of the state, and sensible that
 ‘ a lawful regular authority, once trusted to
 ‘ a single ruler, would soon put an end to
 ‘ their tyranny, they nevertheless taught the
 ‘ people to believe, that, provided those who
 ‘ exercised a military power over them, and
 ‘ overwhelmed them with insults, went by the
 ‘ names of *consules*, *dictatores*, *patricii*, *nobiles*;
 ‘ in a word, by any other appellation than that
 ‘ horrid one of *rex*, they were free; and that
 ‘ such a valuable situation ought to be preserved
 ‘ at the price of every calamity (42). But, in-
 ‘ stead of making any provision for the liberty
 ‘ of the people, great care was taken not to
 ‘ lessen a power which was now become their
 ‘ own. Nay, they presently stretched this
 ‘ power beyond its former tone; and the pu-
 ‘ nishments which the consul inflicted, in a
 ‘ military manner, on a number of those who
 ‘ still adhered to the former mode of govern-
 ‘ ment, and even upon his own children,
 ‘ taught the people what they had to expect

(42) DE LOLME, *Const. of Eng.* b. ii. c. 5. p. 241,
 4th edit.

‘ for the future, if they presumed to oppose
 ‘ the power of those whom they had thus
 ‘ unwarily made their masters (43).’

So, in a country, where the people themselves, by their representatives, are said, ‘ to
 ‘ be their own governors,’ and who know but little how the powers of government ought to be distributed ; it has generally been easy to make them believe their representatives should be almost every thing (44), not considering, that despotism is not confined to names but to things; ‘ that the only material consequence that may arise from depriving the Crown of that branch of power
 ‘ which has caused their complaints, will,
 ‘ perhaps, be the having transposed it from
 ‘ its former seat to another, and having trust-

(43) DE LOLME, *Const. Eng.* b. ii, c. 15. p. 326.
 4th edit.

(44) ‘ As there are in this state two visible powers,
 ‘ the legislative and executive ; and as every citizen has a
 ‘ will of his own, and may at pleasure assert his independence, most men have a greater fondness for one of
 ‘ these powers than for the other, and the multitude have
 ‘ commonly neither equity nor sense enough, to shew an
 ‘ equal affection to both.’ *Sp. L.* b. xix. c. 27.

‘ ed it to new hands, which will be still more likely to abuse it, than those in which it was formerly lodged (45);’ that if those powers of government, the legislative and the executive, which ought to be kept separate, should, through the error or unforeseen operation of some new regulation, become united, either in one person, or in many; and that inquisitorial power, which ought to watch the executive power of government, should itself become the executive, and require to be watched, a despotic, uncontrollable power would be erected; and, as in the time of Charles I. we should find those very men, who, to gain their ends, should talk of nothing but *magna charta* and *liberty*, would, the moment their purpose was accomplished, immediately trample upon both (46).

The opinion
of several
writers.

LET us not then be carried away by a plausibility meant to deceive, but seriously reflect on what has happened in Poland, as

(45) DE LOLME, *Const. Eng.* b. ii. c. 19. p. 500. 4th edit.

(46) *Ibid.* b. ii. c. 19. p. 508. 4th edit.

well as Sweden, and our own country; that lord treasurer Burleigh, so long ago as the reign of Q. Elizabeth, foretold, ‘ that England could never be ruined, but by a parliament (47) ;’ that Sir MATTHEW HALE (48) observed, this being the highest and greatest court, over which none other can have jurisdiction in the kingdom, if by any means a misgovernment should fall upon it, the subjects of this kingdom are left without all manner of remedy; and that Sir WILLIAM BLACKSTONE (49) has presaged, ‘ that if ever it should happen that the independence of any one of the three branches of the legislature shall be lost, or that it should *become subservient* to the views of either of the other two, there will soon be an end of the constitution.’

INSTEAD of looking upon the Crown as the cause of our complaints, ‘ the danger to our present excellent establishment, if there

(47) BLACK. Com. b. i. c. 2. p. 151.

(48) Of Parliaments, p. 49.

(49) Com. introd. f. 2. p. 51.

‘ really be any, arises (notwithstanding all the
‘ clamour which we have heard to the con-
‘ trary) altogether from another quarter;
‘ and our greatest fear, attention, and pre-
‘ caution ought to be, lest the people, or
‘ more properly their representatives, who
‘ have been gradually gaining both upon the
‘ sovereign and the lords, ever since the time
‘ of Henry VII. should become too heavy
‘ for both at last, and exercise more than a
‘ due influence upon the other two branches
‘ of the legislature. For we may be assured,
‘ though this is a point not often enough
‘ nor sufficiently considered by us, that our
‘ well-poised constitution is overturned, and
‘ its existence as much endangered, when
‘ the house of commons has too large, as
‘ when it has too small a share in the govern-
‘ ment; and, perhaps, the inconveniences
‘ to the governed would be found full as
‘ grievous in the former, as in the latter case;
‘ at least, if we may be allowed to draw any
‘ consequences from the immense impossi-
‘ tions, and that terrible state of misery and
‘ confusion, which happened in the nation
‘ in

‘ in the last century, when the deputies of
‘ the people had, in fact, seized upon the
‘ supreme authority. Whilst the over-ba-
‘ lance of property is so entirely in the hands
‘ of the people, to contend with them will
‘ be to throw all into their power. Though,
‘ therefore, in the present situation of things,
‘ it is absolutely impossible for our kings,
‘ without the introduction of foreign forces,
‘ to subvert the constitution ; yet the *commons*,
‘ on the other hand, have it always in their
‘ power, and therefore may do it ; though
‘ I am ready to own, that such is their mo-
‘ deration, and such their general sense of the
‘ happy temperament of the government
‘ which they live under, that there is not
‘ the least room afforded us to imagine, that
‘ they will attempt any essential innovations.
‘ *The regal authority has its certain limits al-*
‘ *ready prescribed by the laws, which it can-*
‘ *not pass at any time, without alarming the*
‘ *nation with the immediate outcry of ty-*
‘ *ranny and usurpation ; whereas, the bounds*
‘ *between liberty and licentiousness, having*

*' never been duly ascertained, the foundations
' of the constitution may be sapped and ruined,
' before we perceive, or attend to the pleasing
' mischief which is coming upon us (50).'*

(50) Dr. SQUIRE on the Anglo-Sax. Gov. p. 382.

B O O K III.

Of the Nature of the Grievances complained of ; with a view to discover the Principle from which they originate, and the Remedies most likely to cure the Complaint.

THIS Book, in order to separate the different ideas, I shall divide into several heads ; the first is,

C H A P. I.

Of the Nature of the Grievances complained of.

THE nature of the complaint, as I understand it, is, that our arms are unsuccessful abroad ; at home the public councils are distracted, fluctuating, and feeble ; and the public treasure, instead of correcting, in great measure causes, these evils (1).

Unsuccessful
abroad, un-
happy and
prodigal at
home.

(1) See NOTE [CC].

C H A P. II.

Of the Nature and Principles of the English Government.

Democracy, aristocracy, and monarchy, form the nature of the English government.

WE are told, by a great Writer (1), that ' laws ought to be no less relative to ' the *principle*, than to the *nature* of each ' government.' Perhaps, then, before we think of applying remedies, our first consideration ought to be, what are the nature and principles of the English government. Let us clearly understand the real *nature* of the government. Let us but once establish the true *principles* upon which it is founded, and ' laws will soon appear to flow from thence ' as from their source (2).'

' There is this difference,' says the Author last quoted (3), ' between the nature and ' principle of government ; its *nature* is that ' by which it is *constituted*, and its *principle* ' that by which it is *made to act*. One is its

(1) Sp. L. b. iii. c. 1.

(2) Ibid. b. i. c. 3.

(3) Ibid. b. iii. c. 1.

' particular

‘ particular *structure*, and the other the *human passions which set it in motion*.’

Now, as is before observed, it is the *nature* of the English government, not to be defined as any of the three regular forms of government known by the ancients ; to wit, monarchy, aristocracy, or democracy ; but ‘ as a mixed government formed out of all three (4)’, which ‘ nothing can endanger or hurt, but by *destroying the equilibrium of power* between one branch of the legislature ‘ and the rest (5)’.

How the *nature* of the government may be destroyed.

As if the members of the lower house of parliament should not be *elected freely* by the *public*, and for a *short space of time* (6) ; but, on the contrary, should be *selected* by a *pri-*

(4) BLACK. Com. introd. f. ii. p. 50.

(5) Ibid. introd. f. ii. p. 51.

(6) ‘ When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting, may reasonably entertain some hopes of the next ; but were it to be always the same body, the people, upon seeing it once corrupted, would no longer expect any good from its laws ; and of course they would either become desperate, or fall into a state of indolence.’ Sp. L. b. xi. c. 6.

vate hereditary interest, or for a term of long and inconvenient duration, the *nature* or *form* of the government would be changed. The *democratical* part of the government would be turned into an *aristocracy*. In this case, or if the legislative should assume the executive power, the equilibrium of the constituent powers, of course the constitution, would be destroyed. Whether this has actually happened, we shall be best able to judge when we come to treat of *boroughs*.

BUT the constitution of the government may be also destroyed by changing the principle ‘by which it is made to act.’

Virtue, wisdom, and power are its principles.

IT will be necessary then to enquire, not only what is the *structure*, but what are the *principles* of the constituent parts of the English government, or ‘*the human passions which set them in motion.*’

THE celebrated Commentator on the laws of England will tell us—*wisdom, virtue, and power*: the house of peers, says he, should afford wisdom; the commons, virtue; the monarch,

monarch, strength or power. ‘ In general,’ he adds, ‘ all mankind will agree, that government should be reposed in such persons, in whom those qualities are most likely to be found, the perfection of which are among the attributes of him who is emphatically styled the Supreme Being ; the three grand requisites, I mean, of wisdom, of virtue, or goodness, and of power ; WISDOM, to discern the real interest of the community ; goodness, or VIRTUE, to endeavour always to pursue that real interest ; and strength, or POWER, to carry this knowledge and intention into action. These are the natural foundations of sovereignty ; and these are the requisites that ought to be found in every well-constituted frame of government (7).’

If then any particular persons should acquire an interest in the house of commons independent of the *public*, and by those means, or by any other, the members of that house should be induced to consider only how to

How the principles of the government may be destroyed.

(7) BLACK. Com. introd. s. ii. p. 48.

make their *public* conduct subservient to their *private* ends, the *principle* ‘by which the ‘representatives of the people ought to act,’ would be changed : *faction* would ensue ; *corruption* would follow *faction* ; the representatives of the people would be no longer actuated by ‘*virtue*, to endeavour always to ‘pursue the real interest of the community ;’ they would travel out of their own province, and instead of endeavouring always to maintain the *liberty of the subject*, or civil liberty, and the liberty of *the state*, otherwise called political liberty, they would employ all their attention to obtain that which more peculiarly belongs to the executive branch of the government, I mean, *power*.

Effects from
destroying
either the
nature of the
government,
or its prin-
ciples.

A SHORT retrospect into one or two periods of the English history will serve to illustrate this doctrine.

Instance in
the reign of
Q. Elizabeth.

WE will begin with the reign of Q. Elizabeth, in whose time the parliament (8)

(8) By the word *parliament* in this place, and many others, is meant only the *two houses* of parliament, according to the common acceptance of the term.

seems

seems to have been confined chiefly to its *legislative* power of making *laws*, and *granting subsidies*. If no criminal conduct called for the exercise of the inquisitorial power of impeachment, it was considered by Elizabeth to be as unconstitutional for the parliament to meddle with the administration of *state* affairs, as it would have been for them to have meddled with the administration of *justice* (9).

‘ It was, it seems, the constant language of this favourite princess and her ministers, that even that august assembly “ ought not to deal, to judge, or to meddle with her majesty’s prerogative royal (10).” Indeed, so careful was the government in those days, to preserve the strength or power of the executive authority, that even justice was made subservient to it.

ONE Udal (11), a puritanical clergyman, having inveighed in a book which he publish-

(9) BLACK. Com. b. i. c. 7. p. 238. D’EWES, P. 479.

(10) Ibid. b. i. c. 7. p. 238. D’EWES, p. 645.

(11) HUME’s Hist. of Eng. vol. v. append. iii. p. 466.

ed against the government of bishops, it was pretended, that the bishops were part of the queen's political body, and to speak against them, was really to attack the queen; and he was accordingly found guilty of a capital crime.

So thoroughly was the principle established, that the Crown had alone the management of all matters both of church and state, that an opposition to such principles would not even have been 'rewarded with public praise and approbation (12).' So perfectly settled was this principle become, that many extraordinary exertions of power in Q. Elizabeth, were conceived to be nothing but the ordinary course of administration; since they were not thought remarkable enough to be recorded by contemporary writers (13), and are entirely overlooked by most historians.

In effect, in all matters of *government, ecclesiastical and political*, the queen had, per-

(12) HUME's Hist. of Eng. vol. v. append. iii. p. 469.

(13) Ibid. vol. v. append. iii. p. 453.

haps, almost *sovereign* power. To confirm it the more strongly in *religious* concerns, a court of *high commission* was erected. That her authority might be no less in matters of state, the court of *star-chamber*, though it was a court of great antiquity, founded in the common law, was confirmed by statute.

WHAT was the consequence of all this? Did the government lose its principles? No. There being then no faction that durst *seize upon the government*, no private ends were to be answered; of course there was no corruption. *Civil liberty* was consulted in good *civil institutions*. Wholesome laws were not only duly made, but they were, in general, well executed. Not only the subject, but the *constitution* (at least in all civil concerns) was free. The *subject* enjoyed *civil liberty*, the *state* seems also, if we except Elizabeth's arbitrary behaviour to her parliament, to have enjoyed *political liberty*. Had the legislative assemblies been free to *propose political laws* to regulate the *government*, the *executive* power was free to reject them. The house of com-
mons

mons had *virtue*; the subject had *liberty*; the monarch had *power*: ‘Trade,’ says Sir WILLIAM BLACKSTONE (14), ‘flourished, riches increased, the laws were duly administered, *the nation was respected abroad, and the people were happy at home*;’ and after all, is not happiness all that is worth seeking for under any form of government? *Prodigality of the public treasure* was a crime unheard of; and the reign of Q Elizabeth was dignified by posterity with the honourable appellation of *the golden age*.

SINCE this time, several statutes have been made to improve the *liberty of the subject*; to wit, the acts for taking away the court of Star-chamber (15), and the court of high commission (16), the *habeas corpus* act (17), the act for establishing the coronation oath (18), the declaration of rights (19), the act of settle-

(14) BLACK. Com. b. iv. c. 33. p. 426. See NOTE [DD].

(15) 16 Cha. I. c. 10. (16) Ibid. c. 11.

(17) 31 Cha. II. c. 2. (18) 1 W. & M. sess. 1. c. 6.

(19) Ibid. sess. 2. c. 2.

ment,

ment (20), declaring, among other things,
 ' that no pardon shall be pleadable to an im-
 ' peachment by the commons in parliament,'
 and the several acts for making the judges in-
 dependent (21).

BUT whether equal care has been taken to
 maintain inviolate the *power of the state*, I will
 leave to the consideration of others, and the
 determination of impartial history.

WHEN the house of commons afterwards —James I.
 became so numerous and wealthy, perhaps it
 may be thought, that this alone destroyed
 ' the equilibrium of power between one
 ' branch of the legislature and the rest.'
 When James I. ' allowed the house of com-
 ' mons more freedom of debate, than ever
 ' had been indulged by any of his predecess-
 ' fors,' the commons soon began ' to meddle
 ' with matters of state (22).'

' THE people in the republic of Rome, in
 ' early times, exercised rather their legislative

(20) 12 & 13 Wil. III. c. 2. s. 3.

(21) Ibid. and 32 G. II. c. 35. and 1 G. III. c. 23.

(22) HUME's Hist. of Eng. vol. vi. p. 568. note [O].

‘ than their executive power. They were
 ‘ jealous of their legislative power, but they
 ‘ had no great jealousy of the executive.
 ‘ They disputed every branch of the legisla-
 ‘ tive power with the senate, because they
 ‘ were jealous of their liberty ; but they had
 ‘ no disputes about the executive, because
 ‘ they were jealous of their glory (23).’

WAS not this the case in England just before the reign of James the First ?

BUT the Roman people ‘ growing wanton
 ‘ in their prosperity, they increased their
 ‘ executive power (24).’

DID not the same disposition manifest itself immediately on the accession of James the First ?

To prevent the ill consequences attending such conduct, James I. instead of *virtue*, established a false principle of government, the system of *corruption*.

(23) Sp. L. b. xi. c. 17.

(24) Ibid.

CHARLES

CHARLES I. disapproved, as he well might, —Charles I.
a principle so odious.

‘ IF,’ says Lord CLARENDON (25), ‘ that
‘ stratagem (though none of the best), of
‘ winning men by places, had been practised
‘ as soon as the resolution was taken at York
‘ to call a parliament (in which it was appa-
‘ rent dangerous attempts would be made;
‘ and that the court could not be able to resist
‘ those attempts); and if Mr. *Pym*, Mr.
‘ *Hambden*, and Mr. *Hollis*, had been then
‘ preferred with Mr. *Saint John*, before they
‘ were desperately embarked in their desperate
‘ designs; and had innocence enough about
‘ them, to trust the king, and be trusted by
‘ him; having yet contracted no personal ani-
‘ mosities against them; it is very possible, that
‘ they might either have been made instru-
‘ ments to have done good service, or, at
‘ least, been restrained from endeavouring to
‘ subvert the royal building, for supporting
‘ whereof they had been placed as principal
‘ pillars.

(25) Hist. Rebel. vol. i. p. 254.

‘ BUT the rule the king gave himself (very
‘ reasonable at any other time), that they
‘ should first do service, and compass this or
‘ that thing for him, before they should re-
‘ ceive favour, was then very unseasonable:
‘ since, besides that they could not in truth
‘ do him that service without the qualification,
‘ it could not be expected they would desert
‘ that side, by the power of which they were
‘ sure to make themselves considerable, with-
‘ out an unquestionable mark of interest in
‘ the other, by which they were to keep up
‘ their power and reputation : and so, whilst
‘ the king expected they should manifest their
‘ inclinations to his service, by their temper
‘ and moderation in those proceedings that
‘ most offended him ; and they endeavoured,
‘ by doing all the hurt they could, to make
‘ evident the power they had to do him good ;
‘ he grew so far disobliged and provoked,
‘ that he could not in honour gratify them ;
‘ and they so obnoxious, and guilty, that they
‘ could not think themselves secure in his fa-
‘ vour : and thence, according to the policy
‘ and method of injustice, continued to oppress

‘ that power they had injured ; and to raise
‘ a security for themselves, by disabling the
‘ king to question their transgressions.’

THE house of commons, then, having lost
their *virtue*, *power*, instead of *liberty*, became
their object ; the monarch lost his *strength* ;
and the nation was afflicted with ‘ tyranny
‘ and anarchy both.’ The particulars I need
not repeat.

THE commonwealth, possessing every power
of government, for a while were formidable.
But they were soon rent in pieces by faction,
and lost their power as well as virtue.

—The com-
monwealth.

DURING the protectorship, Cromwell,
having the complete strength of monarchy,
protected the nation against foreign enemies,
and subdued domestic faction ; but the demo-
cratical and aristocratical branches of the le-
gislation becoming absorbed, in effect, in the
executive, the latter might have strength or
power ; but there was little or no *liberty*, po-
litical, civil, or religious (26).

—The pro-
tectorship.

(26) See NOTE [EE].

M 3

WHEN

—Charles II.

WHEN all attempts to establish a republic proved abortive, and monarchy was restored in the person of Charles II. the power of the commons was restored also. The power of the latter was, consequently, capable of producing its wonted effects. But instead of *virtue*, Charles adopted the principle of *corruption*; every member of parliament almost was pensioned (27); yet numbers, ‘expecting large recompences and reparations in honours which they could not support, or offices which they could not discharge, or lands and money which the king had not to give (28),’ Charles II. with difficulty, got through a troublesome, wicked, sanguinary reign,

Corruption substituted for virtue in the house of commons.

MORE examples may be needless. I suppose it will be readily admitted, that the same

(27) RAPIN’s Hist, of Eng. vol. xiii. b. xxiii. p. 446. See a curious account of the pensioned parliament in HARRIS’s Cha. II. p. 291; together with the names and characters of some of the pensioners, by Andrew Marvell.

(28) CLARENDON’s Continuation, vol. ii. p. 35. HARRIS’s Life of Cha. II. p. 18, 19.

system

system of corruption has prevailed more or less (always excepting the present times) ever since the Revolution. King William III. though he came to the crown with so much éclat, found not only that ‘ the importance which the commons had acquired by their successful opposition to the Crown, had rendered seats in parliament uncommon objects of contest (29);’ but that the power of the Crown, and the peace of the nation depended on the power or means of gratifying those who came thither (30). Mr. SMELT tells us, that ‘ lord Orford (formerly Sir Robert Walpole); who long directed the councils of this country, pronounced, as the sum of his experience, that “ all men had their prices.” Mrs. MACAULAY, in the introduction to her History of England (31), says, that it is become an established maxim, that corruption is a necessary engine of government ; that the virtue of our forefathers is even the ridicule

(29) MACPHERSON’S Hist. of Gr. Br. p. 196.

(30) RAPIN’S Hist. Eng. Dissert. on the Orig. of Gov. vol. xiv. p. 436.

(31) P. 16.

of every modern politician. The Yorkshire association (32) informs us, that ‘ for almost a century, corruption, with very few exceptions, and short, very short interruptions, has been the avowed *principle* of our government.’ And the Abbé REYNAL reckons, ‘ that the great injury to liberty arises from a set of *ambitious men, who, pursuing an interest* DISTINCT *from that of the public and of posterity*, are wholly bent on increasing their *credit, their rank, and their estates* (33).’

The ill consequence or grievance resulting from it.

IT is true, private rights have been protected, because it was the interest of the commons, the matter affecting themselves, that they should be protected. But in matters of state, meant for the security of the political interest of the community, where there are so many allurements to private advantage, the public interest has, I fear, been often lost

(32) Address i. p. 10.

(33) JUSTAMOND'S Transf. of the Hist. of the Settlements in the E. and W. Indies, vol. iv. p. 382.

in the private views of individuals. Private interest begets parties and faction, which destroy the strength of monarchy; and faction begets corruption, which destroys the virtue of the democracy. Who then can wonder, if we should find *virtue* fled from the *house of commons*, and *strength* from the *executive power*; that we should be *unsuccessful* abroad, and at home *prodigal* and *discontented*!

C H A P. III.

Of the Remedies to cure the Grievances complained of.

SUPPOSING then, that *virtue* in the *house of commons*, and *power* in the *crown*, are the things which are wanted, the question will be, How are they to be obtained? The answer is, Destroy faction and corruption. The effects of faction and corruption have been sufficiently experienced ever since James I. preferred Sir John Saville ‘ on account of ‘ parliamentary interest, and an opposition

Faction and corruption the cause of the grievance.

‘ to

‘ to his measures (1).’ When corruption is substituted for virtue, praise-worthy motives may actuate a few, but the majority will be swayed only by private interest. The nation will be divided chiefly into two parties, the one governed by faction, the other by corruption. Liberty will be turned into licentiousness. Instead of *liberty*, *power* only will be fought for. The benefits to be derived from the public treasure, will be the sole object of both parties; I mean the majority of both parties. Violent contentions will take place. The subject will be distracted with a never-ceasing faction at home. And power being transferred from the *prince* into the hands of *party*, the national force will be divided; and abroad we shall be inglorious and unsuccessful.

The heads of
the different
remedies
propounded
to cure it.

SUCH being the mischiefs arising from faction and corruption, it will behove us carefully to provide against them. And as prevention is better than cure, perhaps no one thing will be more likely to answer the purpose, than that system in which every member

(1) HUME's Hist. of Eng. vol. vi. p. 117.

of parliament shall find it his best interest to consult that of the public. That system, therefore, must be erroneous, which permits any permanent interest in the representative assembly. If the members of the lower house of parliament were truly *elective*, they would be under the controul of the people; they would be truly, at least to every useful purpose, a democratic assembly. The great body of the people, not being able to make laws in person, if those to whom they delegated that trust should betray them, on a fresh election they could remove them. But if the members of the house of commons be hereditary, they become aristocratic; and whatever dangerous designs they may entertain, they can defy the people's voice. If, in short, elections were free, integrity, and not oratory, would be deemed the best qualification of the candidates. Men of property would be chosen, and needy adventurers excluded. Under the management of such men, one might hope for public virtue. One would hope their own interest in the state would secure them from faction; and render them superior to corruption. And,
added

added to this, if their delegation were of short duration, a still further security would be afforded. It would be the interest of such men to prefer their permanent property in the state, to a little temporary advantage; for little the advantage must be, if all permanent interest in the house of commons were excluded: were parliaments of short duration, and truly elective, it would require the mines of Potosi to corrupt them.

BUT lest it should be possible for men of the description I have mentioned to swerve from their duty; and, moved by faction, instead of liberty to become contentious for *power*, it might not, perhaps, be amiss to endeavour to draw a line between *liberty* (which is intrusted to the more especial care of the house of commons), and *power* (which is the peculiar attribute of royalty).

BUT as these things are matters of the greatest national importance, I shall endeavour to give each a separate discussion under the following heads:

1. OF parties and faction.
2. OF corruption.
3. OF boroughs.
4. OF dividing counties into districts ; and therein of requiring a qualification in the electors ; or on the other hand, admitting an universal right of suffrage.
5. OF short parliaments.
6. OF drawing a line between liberty and power.

C H A P. IV.

Of Parties and Faction.

OF all the evils with which government, Evils attending faction ; monarchical or republican, is commonly afflicted, perhaps none requires more carefully to be guarded against, than faction.

THE ancient *republics* of Sparta, Athens, in republics ; Thebes, and Carthage, were all destroyed by faction. The fate of Carthage in particular, whose government, though differing in some features, upon the whole strongly resembles that of England, is thus represented by ROL-

LIN in his Ancient History (1). ‘The government of Carthage,’ says he, ‘was founded upon principles of the most consummate wisdom, and it is with reason that Aristotle (2) ranks this republic in the number of those that were had in the greatest esteem by the ancients, and which was fit to serve as a model for others. He grounds his opinion on a reflection which does great honour to Carthage, by remarking, that from its foundation to his time (that is upwards of 500 years), no considerable sedition had disturbed the peace, nor any tyrant oppressed the liberty of Carthage.’ But what was the consequence? when the *people* obtained ‘*a share in the government,*’ and ‘*grew insolent by their wealth,*’ they ‘arrogated to themselves almost the whole power. From that period the public affairs were transacted wholly by cabals and factions (3);

(1) ROLLIN’S Ancient Hist. vol. i. p. 108, 109, 110.

(2) De Rep. l. ii. c. xi.

(3) It appears by MONTESQUIEU, Sp. L. b. viii. c. 14. that *corruption*, as well as *faction*, was the cause of the ruin of Carthage. Indeed, one is a natural consequence of the other.

‘ which

‘ which POLYBIUS assigns as one of the chief
 ‘ causes of the ruin of Carthage.’ The re-
 public of Rome was indeed preserved some
 time, by having recourse to the unlimited
 power of a dictator ; but she was likewise,
 at last, obliged to yield to the destroying
 hand of faction.

AND ‘ in all states of a *monarchical* form, in monar-
 chies.
 ‘ we see that those men whom their rank and
 ‘ wealth, or their personal power of any
 ‘ kind, have raised above the rest of the
 ‘ people, have generally formed combina-
 ‘ tions among themselves to oppose the power
 ‘ of the monarch. But their views, we must
 ‘ observe, in forming these combinations,
 ‘ were not by any means to set general and
 ‘ impartial limitations on the sovereign au-
 ‘ thority. They endeavoured to render
 ‘ themselves entirely independent of that au-
 ‘ thority ; or even utterly to annihilate it, ac-
 ‘ cording to circumstances.

‘ THUS we see that in all the states of
 ‘ ancient Greece, the kings were at last de-
 ‘ stroyed

‘ destroyed and exterminated (4). The same
 ‘ event happened in Italy, where in remote

‘ (4) In the heroic times of Greece, a kind of monarchy
 ‘ arose that was not of long duration. Those who had
 ‘ been inventors of arts, who had fought in their country’s
 ‘ cause, had established societies, or distributed lands among
 ‘ the people, obtained the regal power, and transmitted it
 ‘ to their children. They were kings, priests, and judges.
 ‘ This is one of the five species of monarchy mentioned
 ‘ by ARISTOTLE; and the only one that can give us any
 ‘ idea of the monarchical constitution. But the plan of
 ‘ this constitution is opposite to that of our modern mo-
 ‘ narchies.

‘ The three powers were there distributed in such a
 ‘ manner as the people had the legislative; and the king,
 ‘ the executive, together with the power of judging;
 ‘ whereas in modern monarchies, the prince is invested
 ‘ with the executive and legislative powers, or, at least,
 ‘ with part of the legislative, but does not assume the
 ‘ power of judging.

‘ In the government of the kings of the heroic times,
 ‘ the three powers were ill distributed. Hence those mo-
 ‘ narchies could not long subsist. For as soon as the people
 ‘ got the legislative power into their hands, they might, as they
 ‘ every where did, upon the very least caprice, subvert the
 ‘ regal authority.

‘ The judiciary power was put into the hands of the
 ‘ same person to whom the executive power had been al-
 ‘ ready committed. From that very instant the monarch
 ‘ became terrible. But at the same time, as he had no
 ‘ share in the legislature, he could make no defence
 ‘ against it: thus his power was in one sense too great;
 ‘ in another, too little. Hence all those kings were ba-
 ‘ nished.” Sp. L. b. xi. c. II.

‘ times

‘ times there existed for a while several king-
‘ doms, as we learn both from the ancient
‘ historians and the poets. And in Rome, we
‘ even know the manner and circumstances
‘ in which such a revolution was brought
‘ about.

‘ IN more modern times, we see the numerous monarchical sovereignties which had been raised in Italy on the ruins of the Roman empire, to have been successively destroyed by powerful factions; and events of much the same nature have at different times taken place in the kingdoms established in the other parts of Europe.

‘ IN Sweden, Denmark, and Poland, for
‘ instance, we find that the *nobles* have com-
‘ monly reduced their sovereigns to the con-
‘ dition of simple presidents over their as-
‘ semblies,—of mere ostensible heads of the
‘ government.

‘ IN Germany, and in France, countries
‘ where the monarchs being possessed of con-
‘ siderable

‘ considerable demefnes, were better able to
 ‘ maintain their independence than the princes
 ‘ juft mentioned, the nobles waged war
 ‘ againft them, fometimes fingly, and fome-
 ‘ times jointly; and events fimilar to thefe
 ‘ have fucceffively happened in Spain, and
 ‘ the modern kingdoms of Italy (5).

‘ IN Scotland, that feat of anarchy, and
 ‘ *ariftocratical* feuds, all the great offices in
 ‘ the State were not only taken from the
 ‘ Crown, but they were moreover made
 ‘ hereditary in the principal families of the
 ‘ body of the nobles :—fuch were the offices
 ‘ of high admiral, high fteward, high con-
 ‘ ftable, great chamberlain, and juftice gene-
 ‘ ral. This latter office implied powers ana-
 ‘ logous to thofe of the lord chancellor and
 ‘ the lord chief juftice of the king’s bench
 ‘ united.

‘ THE king’s minority, or perfonal weak-
 ‘ nefs, or in general the difficulties in which

(5) De LOLME, Conf. Eng. book ii. c. 17. p. 388.
 4th edit.

‘ the State might be involved, were circum-
 ‘ stances of which the Scotch leaders never
 ‘ failed to avail themselves for invading the
 ‘ governing authority: a remarkable instance
 ‘ of the claims they were used to set forth on
 ‘ those occasions, occurs in a bill that was
 ‘ framed in the year 1703, for settling the
 ‘ succession to the Crown, after the demise of
 ‘ the queen, under the title of *An Act for the*
 ‘ *Security of the Kingdom.*

‘ THE Scotch parliament was to sit by its
 ‘ own authority, every year, on the first day
 ‘ of November, and adjourn themselves as
 ‘ they should think proper.

‘ THE king was to give his assent to all
 ‘ laws agreed to, and offered by the estates,
 ‘ or commission proper officers for doing the
 ‘ same.

‘ A COMMITTEE of one and thirty mem-
 ‘ bers, chosen by the parliament, were to be
 ‘ called the king’s council, and govern du-

‘ ring the recess, being accountable to the
‘ parliament.

‘ THE king not to make any foreign treaty
‘ without the consent of parliament.

‘ ALL places and offices, both civil and
‘ military, and all pensions formerly given by
‘ the king, were ever after to be given by
‘ parliament (6).’

AND, in England, we know what happened in the reign of Charles I. RAPIN, who was never looked upon as an advocate for royalty, and whose opinion, in this respect, is therefore the more proper to be quoted, will tell us, what were the real views of parties at that period. Having, in his *Dissertation on the Origin of Government* (intended, as I suppose, as an useful corollary from his history), given a pretty distinct account of the meaning of the terms whig and tory, he thus proceeds:
‘ I am next to examine the different springs

(6) De LOLME, *Const. Eng.* book ii. chap. 17. p. 402. 4th edit. See *Parliamentary Debates anno 1703*.

‘ and

‘ and interests of the two parties. Were we
 ‘ to refer ourselves to what the one says
 ‘ against the other, for satisfaction in this en-
 ‘ quiry, nothing is more just, more upright,
 ‘ more equitable, than the motives which
 ‘ they act upon ; namely, the glory of God,
 ‘ the honour of the king, the public good,
 ‘ and the welfare of the nation. For my
 ‘ part, if I may speak my mind, it is my be-
 ‘ lief that, as they are all men, *interest* (7) is
 ‘ the grand wheel which sets both in motion.
 ‘ From the time that the two parties were
 ‘ formed, each has laboured with the most
 ‘ earnest application to gain a superiority over
 ‘ the other, because this is attended with
 ‘ posts, honours, and dignities, which are
 ‘ distributed among the members of the pre-
 ‘ vailing, in exclusion of those of the con-
 ‘ trary faction. This made king William
 ‘ say, that, *if he had places enough to bestow,*
 ‘ *he should soon reconcile the two parties* (8)—
 ‘ I have said, that interest is the principal

(7) This has been since proved to a demonstration by
 MACPHERSON’S State Papers.

(8) RAPIN’S Dissert. on the Origin of Gov. p. 436.

‘ motive which puts the two parties in action,
‘ and this is but too apparent. If, for in-
‘ stance, the *furious* tories are desirous of
‘ seeing the sovereign in possession of absolute
‘ power, I very much doubt whether this
‘ flows from a desire of procuring the welfare
‘ of the kingdom, even though they should
‘ be perswaded that despotism is the most
‘ complete form of government ; if the pub-
‘ lic good was the sole spring of their actions,
‘ they would not labour with so much heat
‘ and passion. The same may be in a man-
‘ ner said of the other branches of the two
‘ parties. Each would have it believed that
‘ they have only the good of the kingdom in
‘ view, while, in fact, they are only labouring
‘ for themselves, their family, and posterity.
‘ But when I say that interest is their prin-
‘ cipal motive, I pretend not to exclude in-
‘ tirely many others, which may actuate as
‘ well the heads, as the members of each
‘ party. Some believe that their principles
‘ really tend to the good of the State ; others
‘ act from a religious motive : some are
‘ swayed by revenge, party spirit, and the
‘ desire

‘ desire of superiority. Infinite other motives
 ‘ there are which are not necessary to be en-
 ‘ larged on here ; that I may not be led to
 ‘ examine the conduct of particulars, it is
 ‘ certain that many men may pursue the
 ‘ same end from different motives.’ And after-
 wards he asserts, ‘ that *party-spirit*, the cabals
 ‘ of leading men, the intrigues of the court,
 ‘ and private interest, bear too great a sway
 ‘ in the Debates of Parliament (9).’

SUCH has been formerly the spirit of party
 in this country ; and, in times still nearer the
 present, the author of *Thoughts on the Cause of*
the Discontents (10) himself informs us (in-
 deed for a different purpose), that ‘ faction is
 ‘ driving hard to the ruin of this country ;
 ‘ sapping the foundation of its *liberty*, dis-
 ‘ turbing the sources of its domestic tran-
 ‘ quillity, weakening its government over its
 ‘ dependencies, degrading it from all its im-
 ‘ portance in the system of Europe (11).’

(9) RAPIN's Dissert. on the Origin of Gov. p. 438.

(10) Page 40.

(11) Mr. BURKE's *Thoughts on the Cause of the*
Discontents, p. 40.

Remedy propounded.

SEEING then the mischiefs inevitably attendant on faction, and the secret ‘springs and interests’ which produce them, can no way be contrived to make our governors believe it is their best interest to consult that of the public; two great authorities (12) assure us, that in skilful hands, the constitution of the government may be so framed, that ‘every individual may be made to advance the public good, while he only thinks of promoting his own particular interest.’

AND true it is, ‘that whenever there offers to our censure and examination, any plan of government, real or imaginary, where the power is distributed among several courts, and several orders of men, we should always consider the private interest of each court, and each order; and, if we find, that, by the skilful division of the power, the private interest must necessarily, in its operation, concur with the public, we may pronounce that government to be wise and happy. *If, on the contrary, the private*

(12) MONTESQUIEU’S Sp. L. book iii. chap. 8. and BLACK. Comm. book i. chap. ii. p. 157. CATO’S Letters, N^o lx. p. 197.

‘ *interest of each order be not checked, and be*
 ‘ *not directed to public interest, we ought to*
 ‘ look for nothing but FACTION, DISORDER,
 ‘ and TYRANNY from such government. In
 ‘ this opinion I am justified by experience, as
 ‘ well as by the authority of all philosophers
 ‘ and politicians, both ancient and mo-
 ‘ dern (13).’

CHAP. V.

Of Corruption.

HOW mortifying it is, after all our declamations in praise of the English government, to acknowledge, and, I fear, the truth compels us to acknowledge, that one of the very first principles of this boasted government, whatever it may be at present, has not many years ago been corruption.

Corruption
become one
of the first
principles of
government.

How ridiculous to talk of a *free* constitution, and, at the same time, admit its most

vital part to be founded in an *illiberal* principle, of which the most *arbitrary* government would be ashamed ! How disgraceful ! How dangerous ! How disgraceful to the constitution ! How dangerous to liberty ! O, improvident forefathers ! to take so much care of the person, and so little of the property of the subject ; to be so anxious to preserve what there can be no interest in invading, and to be so negligent of that, to which the temptation is so inviting !

This principle first adopted in the reign of James I.

YET, such is the system of corruption ; in other words, such are the private views of parties, I believe it is too true, that the kings of England are now in a manner obliged, in the choice of their ministers in every department, political, fiscal, military, and maritime, to take men more from a consideration of ‘ their parliamentary interest or talents, than of their ministerial abilities ; a sure proof that a secret revolution has happened in the constitution, and has necessitated the princes to adopt new maxims of government.’

‘ment (1).’ And this practice, I think, we may fairly account to have prevailed, more or less, ever since the reign of James I. that he advanced ‘Sir John Saville on account of parliamentary interest, and of opposition to his measures (2);’ always excepting the unfortunate Charles I. who, lord CLARENDON seems to lament, did not follow this practice, although, as he observes, ‘none of the best (3).’

Exercised ever since, excepting by Charles I.

WHAT dangers and mischiefs will one vicious action lead to! Now we are told, that, instead of virtue, corruption is the ruling principle of the government. And those men who are the most violent against this system, seem to attribute it solely to the inclination of

Interest of the Crown to abolish it.

(1) HUME’s Hist. of Eng. And lord CLARENDON, speaking of Charles the First’s appointing some privy counsellors in the first of his troubles, says, ‘They looked upon themselves as preferred thither by their reputation in parliament, not by the kindness and esteem of the king; and so resolved to keep up principally the greatness of that place to which they thought they owed their own greatness.’ Lord CLAR. Hist. Rebel. b. iii. p. 156.

(2) HUME’s Hist. of Eng. vol. vi. c. xlviii. p. 117.

(3) Hist. Rebel. b. iv. p. 254. and b. vii. p. 174.

the

the Crown: whereas it is certainly the true interest of the Crown, to have corruption abolished. Sir Robert Walpole, we are told, thought corruption necessary under our present system of government; but it seems that, at the same time, he saw the inconvenience of the principle, and lamented it. ‘He was always sorry when a place fell vacant. By supplying the vacancy he gained one friend, and made twenty enemies; any one of which could injure him more than the person advanced could serve him (4).’ And, I think, the Author of *Thoughts on the Cause of the Discontents*, himself, acknowledges, that what he calls ‘the junto or interior cabinet,’ did once make an attempt to emancipate the Crown from this bondage; but we find, alas! all their efforts were ineffectual; a real patriot k—g was obliged to submit to what Mr. B—e calls the ‘popular torrent.’ And, in our contest with America, we have seen what have been the consequences.

The prediction of Montesquieu.

LET us then take warning of our danger from Baron MONTESQUIEU; who, after

(4) BURGH’s Pol. Disquisit. vol. ii. p. 89.

deep

deep reflection, and spending twenty years (5) in contemplating the principles of different governments, and, after the warmest panegyric on the constitution of England, pronounces, that it 'will lose its liberty, it 'will perish. Have not,' says he, '*Rome, Sparta, and Carthage* perished? It will 'perish, *when the legislative power shall become more corrupted than the executive* (6).'

THIS is a severe sentence, yet it is no more than a natural deduction from plain principles. 'The principle of a democracy,' says he, 'is *virtue* (7). Virtue in a republic, 'is a most simple thing; it is a love for the 'republic (8). A love of the republic in a 'democracy, is a love of the democracy; a 'love of the democracy, is that of equality; 'the love of equality, limits ambition to the 'sole desire, the sole happiness of doing 'greater services to our country than the

Virtue the true principle of the democratic branch of the legislature.

(5) In his preface to the Spirit of Laws, he begs the reader not to judge too hastily 'of the labour of twenty 'years.'

(6) Sp. L. b. xi. c. 6.

(7) Ibid. b. iii. c. 3.

(8) Ibid. b. v. c. 2.

' rest

‘rest of our fellow-citizens (9): and as this
 ‘love requires a constant preference of public
 ‘to private interest, it is the source of all
 ‘particular virtues: for they are nothing
 ‘more than this very preference itself (10).’
 Whenever, therefore, that equality of interest
 is wanting, which ought to subsist between
 the representative and his constituents in the
 English house of commons, the virtue is cor-
 rupted, which ‘requires a constant preference
 ‘of public to private interest;’ and it must
 be expected we shall soon see the fruits of the
 alteration. *Men do not gather grapes of
 thorns, or figs of thistles.*

LET us, therefore, endeavour to obtain
 democracy in purity; to establish equality;
 that is, so to contrive, that the house of
 commons may have truly a *common* interest
 with the *community*; that no man may have
 an interest *separate and distinct* from that of the
commonwealth.

The horror
 with which
 Locke speaks
 of corrup-
 tion.

‘To employ the treasure of the society
 ‘to corrupt the representatives of the people,

(9) Sp. L. b. v. c. 3.

(10) Ibid. b. iv. c. 5.

‘what

‘ what is it,’ as Mr. LOCKE justly observes,
 ‘ but to cut up the government by the roots,
 ‘ and poison the very fountain of public se-
 ‘ curity (11)?’

PLATO (12) cannot bear with this venality.
 ‘ This is exactly,’ says he, ‘ as if a person
 ‘ was to be made a mariner or pilot of a ship
 ‘ for his money. Is it possible that this rule
 ‘ should be bad in every other employment
 ‘ of life, and hold good only in the admini-
 ‘ stration of a republic?’

‘ THE natural place of virtue is near to
 ‘ liberty (13);’ and I think it may be laid down
 as a maxim, that whenever the representatives
 of the people shall lose their *virtue*, the people
 whom they represent must, in the end, lose
 their *liberty*.

Virtue and
 liberty con-
 genial.

THE government of England, upheld by
 corruption, is not unlike a human body sup-

Government
 upheld by
 corruption,

(11) On Civ. Gov. b. ii. c. 19. f. 222.

(12) Repub. lib. viii.

(13) ‘ But it is not nearer to extreme liberty than to
 ‘ servitude.’ Sp. L. b. viii. c. 5.

ported

like a human
body sup-
ported by
drums.

ported by drums. Each may by these means receive momentary spirits and vigour; but the one will as assuredly destroy the political, as the other the human constitution.

Experiments
that have
been tried,
with obser-
vations
thereon.

BUT it will be said a sufficient experiment has been made, that in the reign of Charles II. 'the Commons came to a resolution of oblig-
'ing all their members to take an oath (14),
'by which they were to protest, that they
'had never received any thing from the court
'since the 1st of January 1672.' I admit it; but RAPIN (15), who tells us this, at the same time adds, 'I know not whether ever
'this resolution was executed.'

IT will also be contended, perhaps, that many acts of parliament have been passed for preventing (16) any person holding a *place* in the customs, excise, &c. (17), or having a

(14) The words of this oath or test may be seen in RAP. Hist. of England, vol. xiv. b. xxiii. p. 69, note.

(15) Hist. of England, vol. xiv. b. xxiii. p. 69.

(16) 6th Anne, c. vii. s. 26.

(17) 5 Will. and M. c. vii. s. 57. 11 and 12 W. III. c. ii. s. 150, 151. 12 and 13 W. III. c. x. s. 89, 90. 6 Anne, c. vii. s. 25, 28, 29, 30, 31. 15 Geo. II. c. xxii. s. 1, 2, 3.

pension

pension during pleasure (18), or *for any term of years* (19), from being elected, or sitting, voting, or acting as members. I grant this too : but what is the governing principle or spirit of these laws ? Did it *restore* the *virtue* of the House of Commons, and the *power* of the Crown, or is it not *professedly only* to *reduce* the influence ; that is, as things have lately been managed, the *power* of the Crown ?

It will most likely be said too, that the experiment was fully made by a statute passed not long before the demise of king William III. to wit, the statute of the 12th and 13th William III. chap. ii. intituled, ‘ An act for the further limitation of the Crown, and better securing the rights and liberties of the subject,’ generally known by the name of the Act of Settlement, which enacts, ‘ that no person who has an office or place of profit under the king, or receives a pension

(18) 6 Anne, c. vii. s. 25.

(19) 1 Geo. c. lvi. The penalty is 20l. for every day in which the member, who is declared incapable of sitting or voting, shall so sit or vote.

‘ from the Crown, shall be capable of serving
 ‘ as a member of ‘the House of Commons;’
 yet, that soon after, in the reign of his successor
 queen Anne (20), an act of parliament was
 passed, which, reciting that ‘ it appeared rea-
 ‘ sonable that the clause should be repealed,’
 repealed it accordingly. But will it be said,
 that when the statute was passed by king Wil-
 liam, any provision was made to restore the
 equilibrium of power, that is, the virtue of the
 House of Commons, and the power of the
 Crown ; by taking away those *factious* motives
 which might induce one of the legislative as-
 semblies to accroach the executive authority ;
 or by destroying that *corruption*, which is by
 some thought so peculiarly to belong, as well to
 those who represent, as to those who con-
 stitute certain boroughs, that they have em-
 phatically stiled this part of the constitution
rotten ?

UNTIL this be done, all acts for taking
 away the influence of places and pensions ;
 for suppressing parliamentary offices ; for sup-

(20) 4 Anne, c. viii. s. 25.

pressing

pressing all useless offices ; even a commission of accounts, though a measure highly salutary, will be, in a great measure, nugatory, and some of the acts, possibly, injurious.

‘ WHILE *Rome* inclined towards aristocracy, the magistrates never received any emoluments from their office (21).’

The notion in Rome.

IN *Holland*; it is said, they have taken care not to let places and pensions bias their public virtue (22).

Holland.

AT *Florence* no man could be a magistrate if he had a brother or near relation in the magistracy (23).

Florence.

IN the *plan of government for Pennsylvania* it is provided, that ‘ no member of their assembly, while he continues such, shall hold any other office, except in the militia.’ And the same kind of provision is made in the

America.

(21) SP. L. b. v. c. 8.

(22) BURGH’S Pol. Disquisit. vol. i. p. 133. Ib. vol. ii. p. 99.

(23) Modern Univ. Hist. vol. cxxxvi. p. 77.

articles of confederation between the American States, and in the different forms of government for Maryland and Georgia. Indeed, in the *plan of government for Pennsylvania*, the establishing of any offices of profit at all, seems to be greatly decried. The thirty-sixth section declares, that ‘ as every freeman, to preserve his independence (if without a sufficient estate), ought to have some profession, calling, trade, or farm, whereby he may honestly subsist, there can be no necessity for, nor use in, establishing offices of profit; the usual effects of which are dependence and servility, unbecoming freemen, in the possessors and expectants; faction, contention, corruption, and disorder among the people. But if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office, through increase of fees, or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature.’

AMONG the means which are said to have Venice.
preserved the freedom of the *Venetians* for
these 1300 years, is mentioned that of ‘ pu-
nishing *capitally* every degree of corrup-
tion (24).’ Even ambassadors from foreign
countries are obliged to give a strict ac-
count of all monies, or presents, received
by them (25).

AND in our own country, every possibility
of interest is effectually banished from the
administration of justice (26). The prudent
jealousy of our ancestors ordained, that no
man of the law should be *judge* of assize in
his own country (27). The presents which
formerly were made to judges of assize, are
now almost totally laid aside. Bribery of a

Corruption
excluded
from all ju-
dicial pro-
ceedings,

‘ (24) PLATO ordered those who received presents for
doing their duty to be punished with death. *They must
not take presents, says he, neither for good nor for evil ac-
tions.*’ Book xii. of *Laws*, Sp. L. b. v. c. xviii.

(25) *Mod. Univ. Hist.* vol. xxvii. p. 5. BURGH’S
Polit. Disquisit. p. 289.

(26) BLACK. *Comm.* b. iii. c. 4. p. 58.

(27) Stat. 4 Edw. III. c. ii. 8 Rich. II. c. ii.
13 Henry IV. c. ii. 33 Henry VIII. c. xxiv. But by
12 Geo. II. c. xxvii. they may act in the gaol delivery.

judge, or even to attempt it, would be an high misdemeanor. Corruption in the judge himself might affect his life. The impartiality and disinterestedness of jurymen, an inferior kind of judges, who are to ascertain the crime of which any one is accused, are also wonderfully guarded. The benefit of a challenge or objection is so great, that a *jury* may be said to be the common choice of both parties. An interested *witness* is not to be heard.

More necessary in legislative proceedings.

THUS all *judicial* proceedings seem to be admirably contrived to resist the influence of corruption: surely then the *legislature*, which is charged with a much more important office than that of administering or *expounding* the laws; namely, with that of *making* them; ought to be equally far removed from all possibility of corruption. 'The mischiefs occasioned by
' the first,' says a certain writer, 'reach only
' to individuals; that of the last affects the
' whole nation, and even the generations to
' come (28).'

(28) Collection of Political Tracts, p. 271.

LET us remember, that until the Revolution, except in the reign of Charles II. corruption was very little known: that at the Revolution in 1688, or at least at the Restoration in 1660, there was no funded national debt (29); and that since that period, a debt has been accumulating upon the nation, which at length, in about a century, has risen to the frightful sum of 250 millions and upwards: for the payment of the perpetual interest of which, and the charges of management, amounting yearly to a sum which would formerly have been thought enormous for the

Corruption very little known until the Revolution.

Till then there was little or no funded national debt.

(29) BLACK Comm. b. i. c. viii. p. 326. 335. In Charles the Second's time, the debt to the bankers amounting to 1,328,526*l.* by a statute 12 William, it was enacted, that, in discharge of certain annual perpetual payments, and arrears thereof, granted by king Charles II. to several patentees, out of the hereditary excise, the same excise should, from the 26th of December 1705, stand charged for ever with the payment of 3*l.* *per annum* for the principal sums of the owners, their heirs and assigns, for ever; nevertheless redeemable upon payment of a moiety of the principal sums; *by which means the nation became charged with a debt of 664,263*l.* being the moiety of 1,328,526*l.* which these principal sums amounted to, and which is the only debt we are now charged with that had any part of its rise before the Revolution.* HARRIS's Life of Charles II. vol ii. p. 290.

most extraordinary purpose, ' the creditors
 ' hold in mortgage the land, the trade, and
 ' the personal industry of the subject; from
 ' which the money must arise that supplies the
 ' several taxes. Of course the land, the trade,
 ' and the personal industry of individuals, are
 ' diminished in their true value just so much
 ' as they are pledged to answer (30),'

Mischief
 arising from
 the national
 debt.

If then every additional tax be in reality an additional mortgage on the land, the commerce, and the personal industry of the nation, what has the nation gained by the system of funding? Instead of raising and paying at once the principal, the people and their posterity are saddled with a perpetual interest, an interest more extravagant than is usual on private mortgages, with douceurs besides, and large annual salaries to persons to receive and distribute the interest-money. Like extravagant young spendthrifts, instead of living on our income, we mortgage; never thinking about our *revenue*, we go to war with our whole *capital*; mortgage is added to mortgage, until the charge for salaries

(30) BLACK. Comm. b. i. c. viii. p. 327.

alone exceeds the ancient ordinary revenue, The more numerous the places, the more numerous the claimants for them; the more valuable, the more violently they are contended for. Place is added to place; the ordinary revenue exceeds the most extraordinary of former ages, granted for the most extraordinary purpose: the sinking fund, instead of sinking the national debt, sinks the national resources; a considerable quantity of specie is drawn out of the nation to pay interest to foreigners; and thus England is impoverished and other nations enriched, and *extraordinary means* are made use of to strengthen our enemies, and hasten our own destruction. As the taxes increase, public credit declines; in proportion as the exigencies of the State are augmented, the means of providing for them diminish; the value of the funds is reduced (31); as with individuals in a failing condition, every shift is made use of to support drooping credit. Money is raised at interest upon exorbitant

(31) The 3 per cent. annuities were formerly at 105. See Dr. PRICE's Addit. Observ. on Civ. Lib. p. 116. 190, 191.

terms ; terms which in private individuals would be deemed usurious. Taxes are raised by ruinous expedients. A duty is laid on merchandize at its first importation ; the price is enhanced, the home consumption lessened, the sale for foreign merchandize (32); both at home and abroad, is lost ; and, what is still worse, the duty being laid on the raw material, this, with the high price of provisions, and other necessaries, raises the price of the wares when wrought up ; foreign countries undersel us, and we lose both our *manufactures*, and the benefit we derive from our *ex-*

(32) According to ABBE REYNAL, by laying a duty in 1663, of four and a half per cent. on all sugars brought from Barbadoes, and by afterwards increasing the impost both in that and our other settlements, the English sugar islands lost their foreign trade, and the consumption of their sugar became confined solely to the British dominions. (JUSTAMOND's Transl. of ABBE REYNAL's Hist. of the Settlements and Trade in the East and West Indies, vol. iii. b. xiv. p. 468). If this be true, and the English could have bought sugars of the French as cheap as those of Barbadoes, without the duty, had it not been for the British legislature, is not the tax, in reality, a tax upon the English ? and may not the same thing be said of the merchandize brought from the East Indies, particularly of tea ? If it may, is the East India Company, in point of revenue, of that advantage it is commonly supposed to be ?

ports.

ports. A duty on any commodity paid by the importer, is increased by the wholesale merchant, by those who retail it, by the various artificers in the different branches of the manufacture, until the charge becomes enormous (33); 'the duty exceeds seventeen or eighteen times the value of the commodity (34);' the temptation to smuggling is immense; 'the goods being intrinsically of inconsiderable value, the natural and most reasonable penalty; namely, the confiscation of the merchandize; becomes incapable of putting a stop to it; recourse is had to extravagant punishments, such as those inflicted for capital crimes; all proportion of punishment is at an end; people that cannot really be considered as bad men, are punished like villains, which, of all things in the world, is the most contrary to the spirit of a moderate government (35).' Laws

(33) See BLACK. Comm. b. i. c. viii. p. 314.

(34) SP. L. b. xiii. c. viii. Is England the country here meant?

(35) SP. L. b. xiii. c. viii. BLACK. Comm. b. i. §. viii. p. 316.

being ineffectual, force is applied ; the order of things is inverted, and a navy is made use of, not to protect, but to prevent foreign trade ; the nation is at war with its own subjects ; foreign commerce seems in a manner proscribed. Taxes on *merchandize*, and the severity and violence with which they are exacted, prevent a free trade ; and the people no longer enjoy the liberty of the sea, and the wealth it produces. High imposts on *necessaries* and *land*, shew the property we already possess (a most important branch of our liberties), is no longer secure : the people plainly perceive they are dealt with in an unreasonable manner, and become most exquisitely sensible of their slavish situation (36). The revenue laws become odious ; every evasion is openly practised ; the taxes are unproductive ; juries cannot be trusted with enforcing them ; fundamentally opposite to the spirit of the constitution (37) ; commissioners of the revenue and justices of

(36) SP. L. b. xiii. c. viii. BLACK. Comm. b. i. c. viii. p. 316.

(37) BLACK. Comm. b. iv. c. xxvii. p. 344.

the peace exercise the function of juries. All constitutional controul by the *country* being taken away, an high duty is laid even on our food, clothing, and habitations, which are the real, and indeed the indispensable necessities of life (38). The price of labour is increased; our exports and imports diminished; the *merchant* is impoverished; the *manufacturer* and *labourer*, instead of contributing to the riches of the State, require its support; they starve, beg, emigrate, are transported, or hanged (39); the *landed men* spend their incomes in countries, where they will procure them greater plenty. Universal poverty ensues. With the merchandize and manufactures, the navy decays, the empire of the sea is lost, and liberty, long declining,

(38) Food and raiment (which latter, in an extensive sense, may possibly intend also a place of habitation or covering from the inclemency of the weather), is the language of the Scriptures. One of our greatest poets comprises our real wants in the following lines :

‘ What riches give us, let us then inquire :

‘ Meat, fire and clothes ; what more ? Meat, clothes
‘ and fire. POPE.

(39) See NOTE [FF].

lingers

lingers out a miserable existence, and, at last, through excess of weakness—expires (40).

THIS is a melancholy picture, and yet perhaps a true one. Strange policy! to think of enriching a state by impoverishing its subjects! Though it is true to a demonstration, that repeated augmentations of taxes, must at last make us poor, if we had the riches and commerce of the universe (41). Of what use to us would be riches and commerce, if they were not our own, and were held only in trust for our creditors. Let us therefore pursue a different conduct: let us endeavour to enrich the State, by making wealthy subjects. The time perhaps is not yet passed, but it is in rapid motion. If the debts of this country increase, and those of other countries diminish (42); when we have lost our *manufactures*, and all demand for foreign *merchandise*, both at home and abroad, what must not we expect! In order to avoid future

(40) See NOTE [GG].

(41) Sp. L. b. xiii. c. 17.

(42) See NOTE [HH].

errors, let us look into the past ; let us inquire by what steps the ruin which apparently threatens us has been coming upon us.

MR. BURGH will tell us, that, ‘ in the year
 ‘ 1600, to the last year but one of Q. Eliza-
 ‘ beth, the whole of the ordinary public re-
 ‘ venue amounted to no more than 600,000 *l.*
 ‘ *per annum* (43) ; in 1633, the 8th of
 ‘ Charles I. to 800,000 *l.* (44) ; in 1660, the
 ‘ 12th of Charles II. to 1,200,000 *l.* ; in the
 ‘ year 1686 (45), 2d of Ja. II. to 1,900,000 *l.* ;
 ‘ in 1714, the 12th of Anne, to 3,200,000 *l.* ;
 ‘ in 1751, the 25th of George II. to some-
 ‘ thing short of 6,000,000 *l.* ; and in the 5th
 ‘ of his present majesty, the year 1765, to
 ‘ full 10,300,000 *l.* Thus, from Q. Eliza-
 ‘ beth, to Charles the Second’s time, our
 ‘ public burdens were doubled, being a space
 ‘ of about sixty years ; and from thence to the
 ‘ last of Q. Anne, about fifty-four years, near
 ‘ treble ; from 1714 again, to the year 1751,
 ‘ that again nearly doubled ; and what is still

Progress of
 the national
 debt.

(43) Lord CLARENDON’S Continuation, p. 163.

(44) Commons Journals, 4th September 1660.

(45) Ibid.

‘ more extraordinary; this last enormous
 ‘ burden increased from 6 to upwards of
 ‘ 10,000,000*l.* in the narrow compass of
 ‘ fourteen years, from 1751 to 1765.’ And
 all this, it is to be observed, was prior to the
 American war (46).

Considera-
 tions there-
 on.

THIS, now, is no idle *speculation*, but a
 real fact, and a substantial evil. This is truly
 a *grievance*, which *has increased, is increasing,*
and ought to be diminished (47); a system, if
 continued, which will, sooner or later, as
 certainly prove the ruin of a nation, as a like
 conduct would that of an individual.

A FREEDOM, without example, may en-
 able us ‘ to support the burden of the most
 ‘ heavy taxes, even such as a despotic prince
 ‘ durst not lay upon his subjects (48). But,
 ‘ because a moderate government may pro-
 ‘ duce admirable effects, let not moderation be

(46) BURGH’S *Pol. Disquisit.* vol. ii. p. 109.

(47) Alluding to a motion in the house of commons,
 ‘ That the influence of the Crown had increased, was
 ‘ increasing, and ought to be diminished.’

(48) Sp. L. b. xix. c. 27. See NOTE [II].

‘ laid

‘ laid aside (49) ; because great taxes may be
 ‘ raised, let them not be raised to excess : let
 ‘ us not, ungrateful to the hand of liberty,
 ‘ of whom we receive this present, address
 ‘ ourselves to slavery, who never grants the
 ‘ least favour.’

‘ LIBERTY produces excessive taxes ; but,
 ‘ let us remember, the effect of excessive
 ‘ taxes is to produce slavery in their turn ;
 ‘ and slavery produces a diminution of tri-
 ‘ bute (50).’

BUT, it may be asked, How can there be any redress? Perhaps, the answer is not so difficult as may at first be imagined : *let the members of the legislature have a common, that is, an equal interest with the community.* So long as they have this equal or common interest ; that is, so long as they are themselves equally bound with their constituents, by those

Proposed
redress.

(49) It would be a matter of great curiosity, if any one who keeps a yearly account of the several articles of his expence, could separate the duty from the genuine cost of each article, and shew the price he annually pays for his protection.

(50) Sp. L. b. xiii. c. 12. and 15.

P

laws

laws which are to affect the *person* of the subject, the subject need be under no great apprehension for *personal* liberty. So long as the members of the legislature have no more than a common interest with the community, in assenting to, or dissenting from those laws, which are to affect the *property* of the subject, the subject need be under no concern for his *property*. But should the members of the legislative assemblies, especially those who, being chosen by the more *common* people from their own body, and being, therefore, supposed to have a *common* interest with the *community*, are emphatically called the *commons*; and who, being a *temporary elective* body, *freely* nominated by the *people* (51), have the sole right of originating those laws which are to affect the *property* of the subject; I say, should these men, instead of looking upon this right as a privilege vested in them for the public good, consider it only as a means of procuring for themselves some private advantage, would not instantly one of the first *principles* of the government be changed?

(51) BLACK. Com. b. i. c. 2. p. 169.

‘ the legislative power’ (whose principle is virtue), ‘ become more corrupted than the ‘ executive (52);’ that which was intended for our preservation, be turned to our destruction; and, consequently, that happen which the first of politicians many years ago foresaw was at last to terminate our liberty (53).

WHENEVER this shall happen, ‘ the corruption will encrease among the corrupters, ‘ and likewise among those who are already ‘ corrupted. The people will distribute the ‘ public money among themselves, and having added the administration of affairs to ‘ their indolence, they will be for adding to ‘ their poverty the amusements of luxury. ‘ But with their indolence and luxury, nothing but the public treasure will be able to ‘ satisfy their demands.

‘ WE must not be surpris’d to see their ‘ suffrages given for money. It is impossible ‘ to give a great deal to the people without

(52) Sp. L. b. xi. c. 6.

(53) Ibid.

‘ squeezing much more out of them : but to
 ‘ compass this, the State must be subverted.
 ‘ The greater the advantages they seem to
 ‘ derive from their liberty, the nearer they
 ‘ will draw to the critical moment of losing it.
 ‘ Petty tyrants will arise who will have all the
 ‘ vices of a single tyrant. The small remains
 ‘ of liberty will soon become insupportable ;
 ‘ a single tyrant will start up, and the people
 ‘ lose all, even the advantages of their cor-
 ‘ ruption (54).’

WHETHER this kind of corruption has ex-
 isted ever since the Revolution, or Restora-
 tion, that the national debt first began to ac-
 cumulate ; in plain terms, whether the prin-
 ciple by which the house of commons have
 been actuated since that period, has been
virtue or *venality*, the PEOPLE OF ENG-
 LAND (55) must judge (56). This, however,
 we may venture to say, that it would be a
 disgrace to a government, the admiration of
 mankind, to have it said, that whilst the civil

(54) Sp. L. b. viii. c. 2.

(55) See NOTE [KK].

(56) See NOTE [LL].

rights of individuals are protected nearly in perfection, the political interest of the nation cannot be maintained but by the infamous system of corruption. Should this unfortunately be the fact, we are told by one who, Mr. DALRYMPLE (57) informs us, saw through the whole spirit of the law, that when once a republic is corrupted, ‘there is no possibility of remedying any of the rising evils, but by removing the corruption, and restoring its lost principles; every other correction is either useless, or a new evil (58).’

C H A P. VI.

Of Boroughs.

IN examining any political structure, we are naturally led to look at the foundations; that is, those fundamental constitutions, which have the right of declaring, by laws, the will of the society, and of carrying that will into execution; or, in other words, to consider

(57) Essay towards a Gen. Hist. of Feod. Prop. p. 256.

(58) Sp. L. b. viii. c. 12.

the nature and principles of the legislative and executive powers.

A defect in the representation, the cause of our calamities.

AT present, I shall confine my attention to that part of the English constitution, which, being said to represent the will of the whole community, is generally thought to be so excellent: and excellent it undoubtedly would be, if it did with impartiality, actually, and without prejudice, or any views of private interest or ambition, 'endeavour always to pursue the real interest of the community.' But so fallible is human wisdom, whatever blessings we may enjoy, it appears, upon the most attentive consideration, that to the very imperfection of that which we look upon as the perfection of the English constitution, we are really indebted for all that faction, corruption, prodigality, disorder, and misfortune, which have so long afflicted us.

Deemed so in the time of the commonwealth.

THIS is indeed no new discovery. In the time of the commonwealth, the reformers 'professed to have much at heart the settling of a new model of representation (1).'

(1) HUME's Hist. of Eng. vol. vii. p. 201.

Oliver Cromwell did actually alter the mode of representation; of which I shall speak more at large, when I come to treat of the proposition for adding an hundred members to the counties and the metropolis. At the Revolution, the bill of rights, which, it is said, was drawn up by lord chancellor Somers, and the other great ruling leaders in those days, expressly states, in just so many words, 'that elections of members of parliament ought to be free!' And a celebrated judge (2), even in our own days, has told us, that 'if any alteration might be wished or suggested in the present frame of parliaments, it should be in favour of a more complete representation of the people.' He adds, 'the misfortune is, that the deserted boroughs (3) continued to be summoned to parliament as well as those to whom their trade and inha-

Of Oliver Cromwell.

Same subject glanced at by the bill of rights.

Sir William Blackstone of this opinion.

(2) BLACK. Com. b. i. c. 2. p. 172. 4to edit.

(3) The cities appear, by Domesday Book, to have been, at the conquest, little better than villages. York itself, though it always was the second, at least the third city in England, and was the capital of a great province, which never was thoroughly united with the rest, contained then but 1418 families. HUMPHREY'S Hist. of Eng. vol. i. p. 216. append.

‘ bitants have been transferred ; a few ex-
 ‘ cepted, which have petitioned to be eased
 ‘ of the expence (formerly usual) of main-
 ‘ taining their members (4).’ And this, al-
 though it is ‘ a matter most essential to the
 ‘ liberties of the kingdom, that such mem-
 ‘ bers be delegated to this important trust,
 ‘ as are most eminent for their probity, their
 ‘ fortitude, and their knowledge (5).’

Reasons to
 support these
 opinions.

FOR my own part, after the most minute
 consideration of the three great powers of
 the constitution, the legislative, the judi-
 cial, and the executive ; after the closest at-
 tention to the fundamental principles of the
 government, particularly of that part of it,
 the house of commons, with a view, if pos-
 sible, to find out the cause of the complaints
 which have so long subsisted, I must confess
 I cannot help imputing to the civil dissensions
 in the lower house of parliament the most of
 our political evils.

IF this be truly the foundation of our com-
 plaints, there must be something fundamentally

(4) BLACK. Com. b. i. c. 2. p. 174.

(5) Ibid. p. 161.

wrong in this part of the constitution. Has then the equilibrium of power, which originally subsisted between the several branches of the government, been affected by any accretion of numbers or wealth to the house of commons, during, or since, the peaceable times of Henry VIII. and Q. Elizabeth? Are the laws which establish the right of suffrage, and are fundamental to this part of the constitution, so framed as to convey the will of the community in the choice of their representatives? or have any persons acquired a private right of electing the representatives independent of the will of the public? Have, consequently, any members, instead of being elective, and, like a jury, returning as soon as they have performed their functions into the mass of the people, to partake in common with them of the general benefit or hardship arising from their own decisions, become hereditary; by which, the democratic being turned into an aristocratic assembly, the *nature* of the government is changed? Have the constituents frequent opportunities given them of correcting any error they may have made in their choice; or has any statute been made abridging this fundamental

fundamental right of the people? Has that equality of interest betwixt the representative and his constituents, which is also fundamental to that part of the government composed of the people, or those who represent them, been preserved? Or have the representatives, by the operation of time; or by any statute giving a longer duration to their existence than formerly, acquired a separate and distinct interest from the body of the people, which has disposed them to consider any private views of their own, rather than to represent or express the will of the people; and thus the *principles* of the government have become subverted? Should this be the case, can we say the fundamentals of the constitution are maintained? If not, what have been the consequences? Have any members been moved by views of private interest or ambition? Have any constantly and indiscriminately opposed, and others implicitly acquiesced in every measure of the executive part of government? Have parties hence been formed, united by no tie of public virtue, but connected merely by private interest? Has a
system

system of faction and corruption, therefore, been adopted? Have prodigality, disorder, and misfortune therefore increased?

ALL this is surely deserving the most serious consideration.

WITH respect to the important privilege claimed by the house of commons, for all grants of subsidies, or parliamentary aids, to begin in their house, Sir WILLIAM BLACKSTONE argues thus: ‘ The general reason
 ‘ given for this exclusive privilege of the house
 ‘ of commons is, that the supplies are raised
 ‘ upon the body of the people, and therefore
 ‘ it is proper, that they alone should have the
 ‘ right of taxing themselves. This reason
 ‘ would be unanswerable, if the commons
 ‘ taxed none but themselves; but it is notorious,
 ‘ that a very large share of property is
 ‘ in the possession of the house of lords; that
 ‘ this property is equally taxable, and taxed,
 ‘ as the property of the commons; and,
 ‘ therefore, the commons not being the sole
 ‘ persons taxed, this cannot be the reason of
 ‘ their having the sole right of raising and
 ‘ modelling

‘ modelling the supply. The true reason
 ‘ arising from the spirit of our constitution,
 ‘ seems to be this: The lords being a *per-*
 ‘ *manent hereditary* body, created at pleasure
 ‘ by the king, are supposed more liable to be
 ‘ influenced by the Crown, and when once
 ‘ influenced, to continue so, than the com-
 ‘ mons, *who are a temporary elective body,*
 ‘ *freely nominated by the people* (6).’

Lord Boling-
 broke's opi-
 nion.

LORD BOLINGBROKE, in his Dissertation on Parties, tells us, That if the representatives of the people should betray their trust, the constitution hath provided a remedy to cure the evil, by the gentle method of chusing new representatives. But will any man pre-

(6) BLACK. Com. b. i. c. 2. p. 169. The reasons for and against the exclusive privilege of granting taxes, claimed by the house of commons, may be seen in vol. i. of the *Debates in the House of Commons, anno 1641*. DE LOLME, Const. Eng. p. 86. MONTESQUIEU says, ‘ As
 ‘ an hereditary power might be tempted to pursue its own
 ‘ particular interests, and forget those of the people, it is
 ‘ proper, that where they may reap a singular advantage
 ‘ from being corrupted, as in the laws relating to the sup-
 ‘ plies, they should have no other share in the legislation,
 ‘ than the power of rejecting, and not that of resolving.’
 Sp. L. b. xi. c. 6.

tend

tend to say, if the several members of the house of commons, or the greatest part of them, be returned through a permanent hereditary interest, that the constitution, in the possible case of a corrupt legislature, 'hath provided a remedy to cure the evil?' Can a body so formed be called, with any propriety, an elective, democratic assembly? Are they not as much an aristocratic assembly as the ancient barons; only, without affording, individually, the security derived from large possessions,

House of commons tending to aristocracy.

BUT, it will be asked, Are we then to lose the abilities of those able statesmen, by whom the boroughs have been so often represented? To which I answer, 1. Are those abilities a sufficient recompence for the corruption, prodigality, and disorders at home, and misfortunes abroad, consequent on faction? 2. Are those abilities useful in a *legislative* capacity; namely, in *making laws*, or *granting subsidies*, or to the *executive power*? If to the *executive power*, then, 3. Will their abilities be most useful to the *executive power* in *parliament*?

Objections to, and reasons for, an alteration.

SOME

SOME persons may think, that because the members for the family boroughs are nearly equal for each party, no danger can arise from them. Happy it is that they are so equal. But does this prove that one side is not swayed by faction, and the other by corruption; and that the kingdom is not torn to pieces between them?

Is it not the height of absurdity, to punish the buyer or seller of only one vote, perhaps only one in ten thousand, with a penalty of 500*l.*; and yet to suffer a whole borough to be bought and sold with impunity?

WHILE this traffic is suffered to be carried on, instead of the members being the representatives of the people of England, they may be the representatives, not only of a Nabob or Rajah in the East Indies, but of a more dangerous enemy nearer home.

ON the motion, the 7th of May 1783, I think, a celebrated speaker, himself though a member for a small borough, contended, not
that

that the permanent *hereditary* boroughs were the cause of our evils, but those which are known by the name of the *venal* boroughs. I suppose he meant, because some nabob or improper person might come in as a member by bribery, or purchasing the votes of the constituents. But is not the reason full as good against such a person's purchasing a whole *family-borough*? Is not the chance of success much greater, when he has to make a bargain only with one person, than when he has to agree with 20, or 200?

BUT the evil does not stop here. It is said, that the privilege of franking letters is of a value so great, that that alone is worth the price of a seat in parliament (7). If this be true, that the privilege of parliament is become so prostituted, that the well-meant endeavours of our ancestors for the public good, have turned out to be in fact a sale of a part of the public revenue, which it is in the power of private individuals again to barter away, how necessary it is to put a stop to such accu-

(7) See NOTE [MM].

mulated evils, lest the greater the abuses become, it should in time prove impossible to correct them.

IN order to take away the influence in boroughs, I understand it has been thought by some, an eligible measure, to enlarge their precincts : but I find it is objected, that this will only place them, like *New Shoreham*, under another kind of influence. Is not this, however, owing to a defect in settling the limits of the district? A small number of ELECTORS is doubtless subject to be influenced ; a very great number is also subject to be influenced. But, if by a mistake in marking out the extent of the jurisdiction at *New Shoreham*, some opulent person may have acquired a considerable interest in the borough, it is hoped, at least, it is not a *vendible* interest.

IF, upon the whole then, there be, in reality, either mischief, or danger of mischief, from the present borough representation, it is hoped there is *yet* virtue enough remaining, to apply a proper remedy.

BUT

BUT it will be said, custom is common law, and custom has given a right to the borough-holders. True, but the common law also says, *malus usus abolendus est* (8).

No one, I suppose, would desire to take away the boroughs, without giving to the proprietor an ample satisfaction (9). And where private property stands in the way of the public good, we very well know the remedy provided by the legislature. The sheriff impanels a jury, and they settle the recompence. For, *ratio legis est anima legis; et ubi eadem ratio, ibi idem jus. Salus populi suprema lex est.*

(8) LYTT. f. 212. 4 inst. 274.

(9) The Isle of Man, as a public benefit, was purchased with the public money.

C H A P. VII.

Of dividing Counties into Districts ; and therein of requiring a Qualification in the Electors : or, on the other hand, admitting an universal right of Suffrage.

Equality is unsuitable for a state of civilization where the community is large.

THE natural equality of mankind has, I think, of late been a favourite topic of discourse ; but it will surely be found, upon enquiry, that that which may be proper in a state of nature, and for a small society, may be very unsuitable in a state of civilization where the community is large. When the term equality is applied to an universal right of suffrage in the people, the doctrine is certainly erroneous, and unsupported by any example in the history of this country.

Formerly no right of suffrage.

THERE could be no right of suffrage at all before the House of Commons existed ; because the barons were not *elected* by the *people*, but clearly *selected* by the *sovereign*. When citizens and burgesses became admitted as members of the national assembly, they were

were chosen by *free* men, (1); and when knights of shires were introduced, they were elected only by the smaller barons in the counties, the tenants *in capite*, or *freeholders* (2).

YET one person, misled perhaps by the term *equal representation*, tells us, 'taxation and representation are inseparable;' ano-

Abstrd notion about an universal right of suffrage.

(1) Sir WILLIAM DUGDALE, taking it from LAM-BARD, says, 'the Germans render the word *baro* by *tre-bere*, *id est*, a *freeman*; whence the citizens of London, were at that time called *barons*; the *burgesses* of the *cinque ports* have ever since been known by that name, and the courts in every manor are termed *courts-baron*.' Origines Juridicales, p. 16. BLACK. Comm. b. i. c. 2. p. 173. Ib. b. ii. c. 6. p. 94. Hollinghead, vol. iii. p. 15. HUMPH's Hist. of England, vol. ii. App. ii. p. 118. Whenever, therefore, a corporate body came to hold a fief of the crown *in capite*, every individual member of the corporation became manumitted or enfranchised, that is no longer a villein, but a *freeman*.

(2) An estate of freehold, *liberum tenementum*, or 'frank tenement, is defined by BRITTON, c. 32. to be "the possession of the soil by a freeman," as contradistinguished, I suppose, from a villein (BLACK. Comm. b. ii. c. 7. p. 104.) who was reckoned so base, and ignoble, as to be unworthy the honourable profession of a soldier, *miles*, or knight. MURAT. Antiq. vol. i. p. 743. vol. ii. p. 446. ROBERTSON's Hist. of Charles V. vol. i. p. 276.

ther (3) preaches a still more dangerous doctrine, *viz.* that, in effect, any man, if he has not a vote, has no occasion, although he receives the protection of the laws, to pay any obedience to them. His words, I think, are, ‘ that every Englishman, not being an infant, ‘ an insane person, nor a criminal, hath a ‘ *right* to vote ;’ nay, more, (extraordinary as it may seem !) ‘ a RIGHT *to refuse paying* ‘ *every TAX,*’ [and by the same consequence, a *right* to refuse submitting to any LAW] ‘ so ‘ long as he is denied this privilege.’ All ground their opinion on the meaning of our ancestors at the origin of the house of commons ; whereas any person that will take the trouble to make enquiry into the matter, will find it could never be the design of our ancestors to give an universal right of suffrage, when the ancient barons, and the tenants holding of the crown *in capite*, were *formerly* the *only* representatives of the nation ; that, in truth, it is a certain fact, at no one period of time whatever, they had any such intention. So far from this being the case, and

Electors never more numerous than at present.

that the number of electors is now *less* than it was in former ages, I believe it may with safety be averred, that there is at this very time, or at least there was before the disfranchisement of the revenue officers, a *greater* number of electors in the kingdom, than there ever was at any former period of time whatever. During the time of the strict feudal tenures, every one knows that few (4) was the number that possessed the qualification of an elector. Mr. DALRYMPLE informs us, 'it appears from 'Domesday Book, that, in the time of the 'Conqueror, the whole lands of England, exclusive of those of the church, were possessed 'by only 700 immediate vassals of the 'crown (5). Sir HENRY SPELMAN computes, that in the large county of Norfolk, which extends above fifty miles in length, and about thirty in breadth, 'there was not, in 'the Conqueror's time, above sixty-six proprietors of land (6).' And the Author of

Number greatly increased by various means.

(4) See NOTE [NN].

(5) Essay on Feud. Prop. 262.

(6) HUME's Hist. of Eng. vol. ii. p. 114. Spel. Gloss. in verb. Domesday. Ibid. Origines Juridiciales, p. 13. Lord LYTTLETON's Hist. of Henry II. vol. iii. p. 305.

Legislative Rights, &c. himself, the great champion for an universal right of suffrage, informs us (7), ‘ that in the 25 Henry VI. ‘ the whole number of freeholders, which ‘ elected the knights of the shire for the ‘ county of Surry, was only thirty.’ And doubtless, *since* the statute of 8 Henry VI. which requires, as a qualification in the electors, the possession of free land or tene-ment to the value of 40s. by the year (8); since the extinction of the feudal tenures; since the destruction of entails; the consequent diffusion of landed property; and the great depretiation in the value of money; the number of electors must be greatly encreased.

Montesquieu’s opinion about equality.

WE are told, ‘ that as distant as heaven is ‘ from earth, so is the true spirit of equality

(7) Page 124.

(8) ‘ Bishop FLEETWOOD, in his *Chronicon Pretiosum*, ‘ written about sixty years since, has fully proved 40s. ‘ in the reign of Henry VI. to have been equal to 12l. ‘ *per annum* in the reign of Q. Anne; and, as the value ‘ of money is very considerably lowered since the Bishop ‘ wrote, I think,’ says Sir WILLIAM BLACKSTONE, who wrote in the year 1766, ‘ we may fairly conclude, from ‘ this and other circumstances, that what was equivalent ‘ to 12l. in his days, is equivalent to 20l. at present.’ BLACK. Comm, b, i. c. 2. p. 172.

‘ from

‘ from that of extreme equality. In a state of
 ‘ nature, indeed, all men are born equal ; but
 ‘ they cannot continue long in this equality.
 ‘ Society makes them lose it, and they recover
 ‘ it only by means of the laws (9).’

YET a new doctrine is held forth, that every man, however mean or dependent, has an equal right of voting with the greatest and most wealthy. The inhabitants, however, of the new erected states of America, who have built their forms of government upon the foundation of the English constitution, have thought otherwise. There, where no doubt this matter has been fully considered, we find, by their constitutions, and forms of government, which have been published, that some qualification has been every where uniformly deemed necessary ; and, considering the state of the two countries, a much greater qualification than what is required in this kingdom. The qualification of an ELECTOR,

The practice
 in America.

IN *Massachusetts Bay*, is an annual income of 3*l.* or an estate worth 60*l.*

(9) Sp. L. b. viii. c. 3.

Q 4

IN

IN *Connecticut*, a 40s. freehold, or 40l. personal estate.

IN *New York*, to be the owner of a freehold estate of 20l. value, or the occupier of a tenement of 40s. a-year, and to be rated and pay taxes to the State; with a proviso in favour of resident freemen within the cities of Albany and New York.

IN *New Jersey*, to have an estate in the colony worth 50l. proclamation money.

IN *Pennsylvania*, to have been a resident two years, and to pay public taxes, or to be the son of one who does pay.

IN *Delaware*, a permanent common interest, with an attachment to the community.

IN *Maryland*, to be resident, and to have a freehold of fifty acres, or to have other property above the value of 30l. currency.

IN *Virginia*, to be resiant and a freeholder,
or duly qualified according to law.

IN *North Carolina*, fifty acres, to vote for
a member of the *senate*; and to pay
public taxes, to vote for a member of
the *house of commons*.

IN *South Carolina*, fifty acres of land, or
a town lot, or to pay taxes, or be tax-
able, for fifty acres of land.

IN *Georgia*, to be possessed, in his own right,
of 10*l.* value, and liable to pay taxes; or
being of any mechanic trade, and having
been a resiant in the State six months.

To which we will add, that ‘ Antipater At Athens.
‘ made a law at Athens, that whosoever was
‘ not worth 2000 drachms, should have no
‘ power to vote (10)’. A device seemingly
much commended by MONTESQUIEU.

AND what may perhaps be more con- The scheme
vincing with some readers, the qualification of Cromwell.

(10) Sp. L. b. ii. c. 3.

proposed

proposed by CROMWELL, was an estate of 200*l.* value (11).

Legislature
right in re-
quiring a
qualification
for counties,
and none for
boroughs.

I KNOW much obloquy has been thrown upon the statute of Henry VI. requiring a qualification in county electors. But let us not hastily condemn a transaction which has stood the test of above 350 years experience. Let us rather suppose that we are mistaken, than that the legislature did wrong. For my own part, I am perfectly satisfied, that the legislature judged wisely in requiring a qualification for counties (12), and in requiring none for boroughs. And I flatter myself that those who will give themselves the trouble to consider the matter with attention, will join in the same opinion.

Can at pre-
sent have no
free election
in counties.

IF the electors be too numerous, as in counties, there is scarcely a possibility of hav-

(11) HUME's Hist. of Great Britain, vol. vii. c. 61. p. 239.

(12) Any one that has seen the capricious humours of the populous, in chusing a mayor, or in any other popular election in a corporate town, would be convinced of the utility of some small qualification, even in such elections, provided the electors were sufficiently numerous.

ing

ing a *free* election by the people ; so great are the expence and trouble of an election when contested.

BUT, instead of the members being *elected* by a plurality of their constituents on the day of election, they are (in order, I presume, to preserve the peace of the county, and to prevent, as the statute of Henry VI. expresses it, man-slaughters, riots, batteries, and divisions) *nominated* at a previous meeting of the county, by a few of the principal gentry. Every one can guess how these nominations are generally managed. If some nobleman, or other great personage in the county, or two, three; or more powerful persons happen to unite together, no man, unless upon some urgent occasion indeed, dare oppose them.

Members in counties are *nominated*, not *elected*.

IF any man could have ventured on such a measure, one would have thought it would have been a candidate (13) for the county of York on a late election. Besides the laudable ambition of representing a body so respectable as the county of York, no doubt the disre-

Mr. L—— deterred from standing a poll by the nomination of the Yorkshire Association.

(13) Mr. L——s.

spect he was treated with, must have occasioned in him some degree of resentment. And being in independent circumstances, he, if any man, had a right to indulge his inclination, and stand a contest. But perhaps the course he took was much wiser. A certain body of men having at that time taken to themselves to manage a contest in favour of other persons, and a subscription having been entered into, as I have been informed, for that purpose, the expence to any private individual must have been enormous, and have rendered an opposition an act of imprudence, which even success would not have justified.

BEFORE the combination before alluded to took place, the direction of the county was in other hands ; which, if I remember right, the excluded member himself declared at a public meeting at York, had brought him in as a member for the county more than once.

The opinion
of the Au-
thor of a Let-
ter to Mr.
Debrett, on

THE Author of a *Letter to Mr. DEBRETT, being an answer to the lucubrations during a short recess* (14), is very express on this sub-

(14) Page 23.

ject.

jeft. ‘ I beg leave,’ fays he, ‘ to refer the
 ‘ Author’ [of *Lucubrations* during a *short*
Recess] ‘ to the red book, and, as he may not
 ‘ be much acquainted with county members,
 ‘ and their connections, let him defire Mr.
 ‘ BYNG, or Mr. ROBINSON, to inform him
 ‘ how many county members are now in this
 ‘ parliament, or were in the laft, who are not
 ‘ the entire nomination of peers, he will find
 ‘ one half of them, at leaft, are the near rela-
 ‘ tions or connections of peers, without pro-
 ‘ perty or pretence, except fuch relationship
 ‘ or connection, to be choſen by a county ;
 ‘ almoſt another fourth are elected by the in-
 ‘ tereſt of ſome two or three peers ; and I be-
 ‘ lieve it will be allowed me, that if the peers
 ‘ in every county were to unite, they would
 ‘ nominate every county member in the
 ‘ kingdom, except one.’

the influence
 prevailing
 at county
 elections.

‘ ON peruſing a court kalendar, we may
 ‘ ſee,’ fays another writer, ‘ that almoſt all the
 ‘ noblemen’s ſons in England, who are of a
 ‘ proper age, are members of the lower houſe,
 ‘ and that many commoners have obtained their
 ‘ feats

The opinion
 of a writer
 quoted by
 Mr. Burgh.

‘ seats there, by the interest and countenance
 ‘ of some powerful nobleman’ [whether noble-
 man or commoner, it matters not; if the
 member be returned by any permanent pri-
 vate interest, and not by the public voice, the
 power is surely aristocratic, not democratic].
 ‘ In a word, we seem to be in a fair way of
 ‘ becoming, in a short time, a nation of great
 ‘ lords, and of needy vassals; the consequence
 ‘ of which must infallibly be, that the people,
 ‘ harassed by the oppressions of the great,
 ‘ conscious that their liberties are already ra-
 ‘ vished from them, and chusing rather to
 ‘ submit to one mild master, than to two or
 ‘ three hundred petty tyrants, will petition
 ‘ the sovereign, as the last favour he can
 ‘ grant them, that he will be graciously
 ‘ pleased to establish an absolute monarchy.
 ‘ This was very lately the case in *Denmark*;
 ‘ and if nothing extraordinary happens, it
 ‘ will, in all probability, be very soon the
 ‘ case in *Great Britain* (15).’

Counties
 only a larger
 kind of fa-
 mily bo-
 roughs.

THAT there is an over-ruling influence at
 county elections, I think, cannot be denied.

(15) Polit. Regist. quoted from Lond. Mag. 1767,
 p. 406. BURGH'S Pol. Disq. vol. ii. p. 50.

Neither

Neither elections for counties nor boroughs. are *free*. Counties are in short only a larger kind of family-boroughs.

THE statute of Henry VI. indeed was well calculated to prevent this kind of influence, if the spirit of the law had been abided by, and the qualification had been increased according to the alteration of the times. If that had been done, no man, or set of men, could have had any permanent influence, or any more assurance of success in county elections, than is now enjoyed in chusing a register for the office, established in some counties for registered deeds affecting freehold estates.

Statute of Henry VI. well calculated to prevent this influence.

WE may please ourselves with fanciful speculations, *that those laws which are to bind ALL, ought to be assented to by ALL* ; and should any one be wicked enough to wish for any civil commotion, such kind of tenets may be well calculated to catch the multitude ; but surely, in general, men of property and education, who wish to be governed only by that which real facts and experience prove to be the true interest

interest of the country, will easily discover the fallaciousness of such doctrine, will remember Oliver Cromwell's levellers, and resolutely reject all such theoretical whimsies. The statute of the 7th Henry IV. c. 15. after reciting 'that election of the knights of counties
' for the parliament had been sometimes made
' *of affection of sheriffs,*' having ordained, 'that
' all they that were present at the time of
' election, *as well suitors* (16) *duly summoned*
' *for the same cause, as other,* should attend
' to the election of knights for the parliament ;' it occasioned such a concourse of people, as to render necessary the statute of the 8 Henry VI. c. 7. The first statute seems to have been intended to take away the partiality of sheriffs, by admitting all freeholders, whether tenants *in capite* or not, to an equal right of suffrage (17). But, as is too often the case, the new remedy let in a new mis-

(16) *Suitors* are said to signify those persons who, by the law of feods, were 'to follow, or do *suit* to the lord in
' his courts in time of peace ; and in his armies or war-
' like retinue, when necessity called him to the field.'
BLACK. Comm. b. ii. c. 4. p. 54. second edit.

(17) See NOTE [OO].

chief, which again called for fresh application; and the latter statute was accordingly passed, reciting, ‘ that whereas the elections of knights
 ‘ of shires to come to the parliaments of our
 ‘ lord the king in many counties of the realm
 ‘ of England, have now of late been made by
 ‘ *very great, outrageous, and excessive number*
 ‘ *of people* dwelling within the same counties,
 ‘ of which most part was of people of *small*
 ‘ *substance and of no value*, whereof every of
 ‘ them pretended a voice equivalent, as to
 ‘ such elections to be made, with the most
 ‘ worthy knights and esquires dwelling with-
 ‘ in the same counties, whereby *manslaughters,*
 ‘ *riots, batteries, and divisions among the gentle-*
 ‘ *men*, and other people of the same counties,
 ‘ shall very likely rise and be, unless conve-
 ‘ nient and due remedy be provided in that
 ‘ behalf.’ To prevent *riots* in county elections,
 by *outrageous* and *excessive* number of people,
 the number of electors was to be restrained;
 not only by requiring them to have a certain
 qualification, but to be ‘ people dwelling and
 ‘ *residing* in the same counties.’ And if such
 precaution was then necessary, how much

more cogent now must the reason be, when the number of electors is so greatly increased.

Elections in Wales, Durham, Chester, and the city of London governed by the like principle.

A like qualification, and no doubt for the like reasons, is required in the several acts for admitting the counties in Wales (18), and the counties palatine of Chester (19) and Durham (20), to be represented in parliament. And, I suppose, it was a like kind of policy, that required the electors of the members in parliament for the city of London, to be not only freemen, but liverymen (21).

Qualification in counties ought to be increased.

To me it appears manifest, that if we really wish to have free elections in counties, instead of increasing the number of voters, we ought to reduce the number, by increasing the qualification. DE LOLME makes an observation, which, in this respect, is certainly true, that ‘ the authority of ALL, with which men are ‘ amused, is in reality no more than the authority of a few powerful individuals who ‘ divide the public among themselves (22).’

(18) 27 Henry VIII. c. 26.

(19) 34 Henry VIII. c. 13.

(20) 25 Charles II. c. 9. (21) 11 Geo. c. 18.

(22) Constitution of England, p. 53.

And

And I entirely agree with one of the persons that has corresponded with the committee at Belfast in Ireland, that ' in all cases, where ' the claims of individuals are incompatible ' with the public good, the privilege of a ' part of the community must be postponed ' to the welfare of the whole. For the law ' of self-preservation is to societies, as it is to ' individuals, an indefeasible law (23); and ' that by that law, societies are justifiable, ' which eject, from the full enjoyment of the ' rights of citizens, persons to whom those ' rights could not be continued without danger to the Public. That the election franchise may be considered as both a privilege and a trust; and that men who have been found incapable of executing that trust, in a manner advantageous to the community, are unfit to remain invested with it. That such trust may be as properly taken from those men, as, by the concession of the advocates for its widest extension, it may be withheld from women, minors, and persons of some other descriptions.'

(23) SQUIRE on the Anglo-Sax. Gov. p. 377.

Advantages
attending it.

WHERE the freeholders are extremely numerous, what mischief can possibly arise from increasing the qualification? But the advantages attending it are many. It would shorten the time usually spent in the election, and prevent drunkenness, riots, tumults, and tavern and other expences. Bribery too would be less practised among a set of independent, than a set of needy electors. And, as *life, liberty, and property* are the object of the laws, it seems to be most agreeable to reason, that, besides his life and liberty, an elector should have some property to defend. Without property, men are, if we may so say, but half-citizens (24). Without fortune, or education, they cannot possibly have either a competent knowledge of the principles which are the natural foundations on which government should be built; or, if they should, cannot have sufficient zeal or leisure to attend to their support. And, ' since it is impossible ' in a great multitude to give injunctions to ' every particular man, relative to each parti-

(24) MONTESQUIEU's *Rise and Fall of the Roman Empire*, c. viii. p. 111.

' cular action, general rules are establish-
' ed (25);' and, as every rule respecting life
or personal liberty must therefore be ge-
neral, there seems to be no reasonable
ground to fear, that in these respects there
could be any difference, whether some quali-
fication were required in the electors, or none
at all. There seems to be no great cause for
the poor to complain that they are bound by
the same laws that are made for the rich.
But it seems to be strange, to intrust the pro-
tection of *property* to a choice by men of no
property, men, who, so far from wishing to
protect the property of others, would possibly
rejoice to overthrow or diminish all property
whatever. But what the qualification which
might be required ought to be in the county
of York, whether to the amount required for
voting for an officer to register deeds, &c. af-
fecting freehold estates (26), or to the a-
mount required for serving upon juries (27);

What the
qualification
should be.

(25) BLACK. Com. Introd. f. ii. p. 53.

(26) By the statute 6 Anne, c. 35. for establishing a
register office in the East Riding of Yorkshire, the qualifi-
cation of an elector, is a freehold estate in the East Riding,
or the county of Hull, of 100*l.* *per annum.*

(27) See NOTE [RP].

and whether the qualification ought to be greater for the county of York, where the freeholders are so numerous, than for the county of Rutland, where the freeholders must be few, I will not pretend to determine.

A qualification, in general, improper for boroughs.

BUT, as has been already observed, what might be proper for a numerous body of electors, might be pernicious for a small one; and, therefore, we perceive, that, in elections for boroughs, no landed or pecuniary qualification is required in the voters. If any qualification were required in boroughs, unless their districts were greatly enlarged, it would most likely, in a little time, reduce them all to the condition of boroughs represented by burghage tenure, or what has just the same effect in many places, to the condition of boroughs where the right of election is in persons paying scot and lot, or pot-boilers.

Present mode of representation, both in counties and boroughs, erroneous.

THE melancholy truth is, that, in counties, the electors are too numerous; in boroughs, too few.

IN neither counties nor boroughs the election is *free*. Counties, having too great a number

number of electors, are generally influenced by a few great people; most commonly, perhaps, by the nobility.

IN boroughs, where the number of electors is small, the matter is still worse. Particular families not only enjoy an exclusive power over certain boroughs themselves, but such a power as they can dispose of by sale. Or, if the small boroughs happen not to be so far under the power of any particular individual, but the power of election remains in a few freemen, the case is very little better; a sale is the natural consequence. By wholesale or retail, if the borough be not represented by the proprietor himself, it is sure to be sold.

EVEN the boroughs generally deemed the most unexceptionable, are not exempt from a considerable share in this traffic. In the very boroughs, where that darling privilege, a kind of universal right of suffrage prevails; and where, therefore, the number of electors may possibly be considerable, it is well known, that a single guinea a-piece given to the electors, would be preferred to all the intellectual

Objection
even to large
boroughs.

endowments the candidates could possess. Indeed, it may be looked upon as a general rule, almost without exception, that, in all boroughs, money is the merit of the candidate.

BUT these are not the only imperfections attending the present mode of representation. For should the *number* of electors be wholly unexceptionable, yet if they be confined to a narrow district, and the very lowest of the people be permitted to vote; at some time or other the place is sure to fall under the influence of some wealthy individual; and especially under the present mode of electing *two* members for a place. To illustrate this by an example. I could point out a borough where a certain person has about an hundred and twenty of the burgessees for his tenants, and the whole number of freemen is about one thousand; and yet he and his predecessors have, for ages, generally brought in one of the members. It will not, perhaps, be easily conceived how so small a number should produce so great a certainty; but a little reflection will make the matter plain. If

there happens to be a contest, it is generally thought to lie between the other two candidates. Of course, each of the others, for fear of strengthening his rival, gets his friends to throw their second votes on this gentleman. And thus, from an imaginary security, and by the help of a small dole, annually distributed to the poor burgessees by one of the family, he becomes really secure; and not only secure himself, but capable of casting the scale in favour of either of the other candidates also. For as the dependents on this interest are at the poll reserved to the last, they can either give single votes for their landlord, in case they apprehend his election to be in danger; or if not, can give a second vote to any of the other candidates he is inclined to favour.

BUT, were the district more extensive, or only one member chosen instead of two, this interest would, in a great measure, vanish. In a large district, and especially if some qualification were required, the property of any individual

individual would be of little avail. But if, added to this extension, one member *only* were to be chosen (28), the influence would be in a manner none at all. Nay, if the borough I have alluded to, was to remain circumstanced as at present, and only one member were to be elected instead of two, I much question, whether the interest I have mentioned would have greater certainty of success than that of any other person. For, though the gentleman should be able to command a hundred and twenty votes, a number more than equal to that, I think, would, for that very reason, be against him.

A new speculation as to market-towns.

I SHOULD, therefore, apprehend, if counties be too numerous; the boroughs be too confined, both in respect of numbers, and extent of district; and there be a fault in requiring more than one member for a place; that that mode of election would be the most perfect, which should avoid all these inconveniences.

(28) ‘The Dutch republic consists of seven provinces, of *different extent of territory*, which have each *one voice*,’ Sp. I. b. ix. c. 3.

And

And this, I think, might be obtained by requiring, not the counties or boroughs, but every market-town, and a certain district (29) of the adjacent country, containing a sufficient number of the adjoining parishes, to send *one* member.

ACCORDING to an account I have seen, which, by the way, I fancy is not very correct, the number of members, in that case, would stand as follows. But by joining two, three, or more districts together, the number might be easily lessened.

(29) In the excise, I believe, counties are divided into *districts*. For the greater ease in making the collection, the collector keeps an office in every market-town, which town, with a certain part of the adjacent country, is called by the name of a particular district.

Bedfordshire

	Market- towns.		Market- towns.
Bedfordshire	- 10	Lincolnshire	- 22
Berkshire	- 12	Middlesex	- 5
Buckinghamshire	11	Monmouthshire	7
Cambridgeshire	7	Norfolk	- 23
Cheshire	- 12	Northamptonshire	11
Cornwall	- 19	Northumberland	9
Cumberland	- 8	Nottinghamshire	9
Derbyshire	- 8	Oxfordshire	- 9
Devonshire	- 32	Rutlandshire	- 2
Dorsetshire	19	Shropshire	- 15
Durham	- 4	Somerſetſhire	- 30
Effex	- 19	Staffordſhire	- 13
Gloucestershire	19	Suffolk	- 30
Hampshire	- 26	Surry	- 9
Herefordshire	- 8	Suffex	- 16
Hertfordshire	15	Warwickshire	17
Huntingdonshire	5	Westmoreland	- 3
Kent	- 22	Wiltſhire	- 18
Lancashire	- 17	Worceſter	- 11
Leiceſterſhire	- 10	Yorkſhire	- 40
	<hr/>		<hr/>
	283		299
			283
			<hr/>
			582

SOME alteration, however, seems to be necessary. The people of many ages have been of that opinion. And if *all* the members, in general, for counties, and for the smaller boroughs, and *one* of the members for the largest sort of boroughs, be returned, not by the temporary voice of the public, but through a permanent private interest, is it not an absurdity, to call the members of the lower house of parliament, the representatives of the people?

IN making the distribution of the representatives among the counties, which has been mentioned, the legislature should not, however, be so much guided by the number of market-towns, as by the present number of the representatives in each county. If every county did not send the same number of knights, citizens, and burgesses, as it now does, the alteration might spread an alarm of an equal land tax, and be reprobated as a dangerous innovation.

SHOULD

As to parochial representatives chusing the knights of the shires.

SHOULD this scheme be disapproved, another, perhaps, might deserve consideration. Would it not contribute to the freedom of election in counties, if they are to remain as at present, and prevent tumults, riots, disorders, and expence, if every parish was to chuse a parochial representative; and those parochial representatives were to chuse the knights of the shires?

As to representation of the commercial interest in boroughs.

I DOUBT not, however, from what I heard when Mr. Pitt made his motion on the 7th of May 1783, but that great opposition will arise to *any* proposition whatsoever for altering the present mode of representation. Much stress, I imagine, will be laid on the *commercial* interest. But are the boroughs always really represented by merchants? On the contrary, are they not always represented by persons of landed property? At least, does not the law declare, that the members for boroughs shall have a landed property of 300 *l. per annum*? And is there any impropriety in this? Is not the increase of trade the benefit of the landholder? And would not any landholder be
thought

thought a madman to injure the commercial interests of his country ?

It must, indeed, be confessed, it is extremely difficult to propose any plan whatever, to which some objection may not be made. And should the mode of dividing counties into districts be adopted, and were each to chuse but one member, the scheme might still prove defective in some instances, unless there were a limitation of the number of electors. If the electors were to be either too many, or too few, still no *free* election by the people would prevail ; but the election would probably fall under some particular influence. If the number of electors was too great, most likely the election would be influenced in the manner as at present in counties : if the number was too few, or the district too confined, in all likelihood that kind of influence which is now prevalent in the larger boroughs, would take place. To avoid both extremes, perhaps, the number of electors in any place should not much exceed, nor fall much short of fifteen hundred (30).

District should not be too narrow, nor the electors either too numerous or otherwise.

(30) See NOTE [QQ].

‘ IT

Montesquieu's opinion.

‘ It is an essential point,’ says an eminent writer (31), ‘ to fix the number of citizens ‘ who are to form the public assemblies ;’ and [why may not this doctrine, in a suitable degree, be applicable to both the elective and the representative bodies ?] ‘ At Sparta,’ says he, ‘ the number was fixed to ten thousand. ‘ But at Rome, a city designed by Providence ‘ to rise from the weakest beginnings to the ‘ highest pitch of grandeur ; at Rome, a city ‘ doomed to experience all the vicissitudes of ‘ fortune ; at Rome, who had sometimes all ‘ her inhabitants without her walls, and sometimes all Italy, and a considerable part of ‘ the world within them ; at Rome, I say, ‘ this number was never fixed, and *this was ‘ one of the principal causes of her ruin* (32).’

(31) Sp. L. b. ii. c. 2.

(32) See NOTE [RR].

C H A P. VIII.

Of short Parliaments.

IN discussing this subject, I shall not trouble myself, or the reader, to make any great search into the dark records of antiquity.

The legality of frequent new parliaments.

WHAT the law or usage *has been*, or even *is now* (1), seems not so material, as *what it ought to be*. This is well expressed by lord BOLINGBROKE, who, in his Dissertation on Parties, tells us, ‘ First, that nothing can ‘ make it *safe*, nor therefore reasonable, to ‘ repose in any set of men whatsoever, so great ‘ a trust as the collective body, delegates to ‘ the representative in this kingdom, except ‘ the shortness of the term for which this trust ‘ is delegated. Secondly, that every pro- ‘ longation of this term is, therefore, in its ‘ degree unsafe to the people; that it weakens

Lord Bolingbroke’s opinion.

(1) Those who are curious in such researches may read BLACK. Com. b. i. c. 2. p. 153. A note in HATSELL’s Preced. p. 196. and Lord LYTT. Hist. Hen. II. vol. iii. p. 223. 234. notes, p. 372. 450. 8vo edit.

S

‘ their

' their security, and endangers liberty by the
 ' very powers given for its preservation.
 ' Thirdly, that such prolongations expose
 ' the nation, in the possible case of having a
 ' corrupt parliament, to lose the great ad-
 ' vantage which our constitution hath pro-
 ' vided, of curing the evil before it grows
 ' confirmed and desperate, by the gentle
 ' method of chusing a new representative, and
 ' reduce the nation, by consequence, to have
 ' no other alternative than that of submitting,
 ' or resisting; though submission will be as
 ' grievous, and resistance much more diffi-
 ' cult, *when the LEGISLATURE betrays its*
 ' *trust, than when the KING alone abuses his*
 ' power. The people of Britain have as good
 ' a right, and a right as necessary to be assert-
 ' ed, to keep their *representatives* true to the
 ' trust reposed in them, and to the preserva-
 ' tion of the constitution, by the controul of
 ' *frequent elections*, as they have to keep their
 ' *kings* true to the trust reposed in them, and
 ' to the preservation of the constitution, by
 ' the controul of *frequent sittings of parliament*.

' In

' In a word, our constitution means, that the
' members of this body should be kept, as it
' were, to their good behaviour, by the fre-
' quent returns of *new elections*. It does all
' that a constitution can do, all that can be
' done by legal provisions, [*Qu.*] to secure the
' interests of the people, by maintaining the
' integrity of their trustees; and lest all this
' should fail, it gives frequent opportunities to
' the people, to secure their interests them-
' selves, by mending the choice of their
' trustees; so that, as a *bad king* must stand in
' awe of an *honest parliament*, a *corrupt house*
' of commons must stand in awe of an *honest*
' people.'

FOR fear of corruption, it has been thought
good policy in many countries to shorten the
duration of power. At Athens (2), the se-
nate was changed every three months. At
Lucca (3), the magistrates are chosen only
for two months. At Ragusa (4), the chief
magistrate is changed every month, the other

At Athens,
Lucca, and
Ragusa,
power of
short dura-

(2) Sp. L. b. v. c. 7.

(3) Ibid. b. ii. c. 3.

(4) TOURNEFORT's Voyages.

officers every week, and the governor of the castle every day.

The idea entertained by the legislature of England.

IN this country, formerly, ‘ *in folkmoeto*, ‘ *semel quotannis* sub initio calendarum Maii ‘ (tanquam in *annuo* parlamento) convenere regni principes, tam episcopi quam ‘ magistratus (5), *liberique homines* (6).’ Afterwards, by the statutes 4 Edward III. c. 14. and 36 Edward III. c. 10. ‘ it was accorded, that ‘ a parliament should be holden [not chosen], ‘ indeed, every year once, and more often, ‘ if need were.’ By the bill of rights (7), parliaments ought to be held *frequently*; and as this was an indefinite expression, a statute of the 6 W. & M. c. 2. enacted, ‘ that no ‘ parliament should have any continuance ‘ longer than for three years only at the farthest.’

WHAT reason then shall be given for the septennial act, only twenty-one years after,

(5) Were these *magistratus* the great barons, and the chief officers of cities and boroughs?

(6) SPELMAN’s Gloss.

(7) 1 W. & M. st. 2. c. 2.

viz.

viz. the 1 Geo. I. c. 38. The preamble sets forth two:

THE first (8), that a ‘restless popish faction was designing, and endeavouring to renew the rebellion within the kingdom, and an invasion from abroad.’ But surely there can now be no just cause to apprehend a design in any popish faction renewing a rebellion or invasion.

THIS reason, then, if ever it existed, having ceased, let us see what was the other: ‘that the act for triennial parliaments’ (that which we have just quoted), ‘had proved very grievous and burthensome, by occasioning much greater and more continued expences, in order to elections of members to serve in parliament, and more violent and lasting *heats and animosities* among the subjects of the realm, than *were ever known before* the triennial act was made.’

(8) *The Yorkshire Association*, I think, say this was the single reason. Addr. i. p. 13.

It appears then, that, in the 1 George I. *anno* 1715, the expences, heats, and animosities at election of members to serve in parliament, were become so grievous as were never known before. Granted. But was this owing to the triennial bill, or to a revolution in the ancient function of parliament? If parliament have really usurped, as some imagine, the executive power, can we wonder, when we think of Poland, to hear of expence, heats, and animosities at elections?

Mischiefs attending frequent prorogations.

IF triennial parliaments were so grievous, what were annual parliaments? What was the case in former times, when prorogations for any considerable length of time, were very uncommon; and it was most usual, as soon as the business of a parliament was over, to dissolve it, and to call a new one the next year? . Why, I think, we have before observed, such were the great *heats and animosities*, that, from (9) the 49 Henry III. to the 22 Edward IV. that is, for above 200 years, there were only 'two or three instances of

(9) PRYNN, Brev. Parl. Red. p. 137.

‘controverted elections; and not one of a double return (10)’.

WHEN was it, then, that the proroguing of the parliament for so long a space of time first came into use? If we may believe the authorities cited by Mr. BURGH, in his Political Disquisitions (11), this practice began in the reign of Henry VIII. It is possible, therefore, that, in this reign, complaints might be made of *expence, heats, and animosities* at elections. Then, perhaps, the value of a seat in parliament began to be understood. We know, however, that, in the 13th year of the reign of Q. Elizabeth, as is before noticed, bribery at elections first began to be practised (12). And in the reign of George I. when parliaments were become triennial, it seems the *expences* at elections were become

(10) In the beginning of the parliament in 1734, there were seventy-one contested elections. Deb. Com. 9, 10. And in 1742, the number was so great, and the examining them so endless, that the house of commons made a resolution to hear no more contested elections. Deb. Com. vol. xiii. p. 184. BURGH’s Pol. Disq. vol. i. p. 295.

(11) Vol. i. p. 139. 151. 169, 170.

(12) BLACK. Com. b. i. c. 2. p. 179.

so *grievous and burthensome*, and the *beats and animosities* so violent, as were *never known before*. What was the remedy? Not annual parliaments (13), of which a long succession of ages had shewn the propriety, but septennial parliaments; though a long parliament in the reign of Charles I. had produced a faction that overturned the constitution; though a long parliament in the reign of Charles II. notwithstanding they consisted almost entirely of what were then called high-flyers, and were so corrupted that almost every member was pensioned (14), also produced a faction, which, 'before their dissolution, seemed to be treading fast in the same footsteps (15).' Did the septennial act, then, answer the end for which it was designed, and lessen the expence of elections? I fear the exact contrary is the truth; that (16) ever since we have had septennial parliaments, the expence at elections has been literally *more grievous and burthen-*

(13) See NOTE [SS].

(14) RAPIN's Hist. of Eng. vol. xiii. p. 446.

(15) HUME's Hist. of Gr. Br. vol. viii. p. 88. ch. 67.

(16) BURGH's Pol. Disq. vol. i. p. 144.

some, and the heats and animosities occasioned by elections, more VIOLENT, than were ever known before. The price of a borough, which, thirty years ago, was 1500*l.* is now thought a pennyworth at 3000*l.* (17).

TRIENNIAL parliaments, then, were not the cause of *the grievous expence, and the violent heats and animosities* assigned as one of the reasons of the septennial act. What then was the cause? It is hoped it was not that which is set forth in the speech of a Member of Parliament, made to support Mr. Sawbridge's annual motion for shortening the duration of parliaments, quoted by Mr. BURGH in his Political Disquisitions, vol. i. p. 171. in which he tells us, that 'the king, according to the original constitution, has the *executive* power wholly in his own hands; but parliament, which was appointed to watch over administration, *is become itself the administration*; and for the faithful shepherd's dogs of former times, we have now, by an unnatural copulation, a breed of wolves to guard the flock."

(17) BURGH's Pol. Disq. vol. ii. p. 138.

CONFORM-

CONFORMABLY to this notion, we now hear a *third* reason assigned for septennial parliaments ; that the administration of the government, if parliaments were short, would become fluctuating and unstable ; as if the *house of commons* were the administrators of the government, or executive power. Whereas that very interference of the commons in the administration, I understand, was formerly thought by De Wit, to be the cause of ‘ such a fluctuation in the English councils,’ as is before observed, ‘ that it was not possible ‘ to take any sure or certain measures with ‘ the kingdom (18).’

A CERTAIN politician says, ‘ I can see no ‘ means in human policy, to preserve the ‘ public liberty, and a monarchical form of ‘ government together, but by the frequent ‘ fresh elections of the people’s deputies : this ‘ is what the writers in politics call rotation ‘ of magistracy. Men, when they first enter ‘ into magistracy, have often their former ‘ condition before their eyes : they remember

(18) HUME’s Hist. of Eng. vol. vii. p. 434.

' what they themselves suffered with their
 ' fellow-subjects from the abuse of power,
 ' and how much they blamed it ; and so their
 ' first purposes are, to be humble, modest, and
 ' just ; and probably for some time they con-
 ' tinue so. But the possession of power soon
 ' alters and vitiates their hearts, which are, at
 ' the same time, sure to be leavened, and
 ' puffed up to an unnatural size, by the de-
 ' ceitful incense of false friends, and by the
 ' prostrate submission of parasites. First, they
 ' grow indifferent to all their good designs,
 ' then drop them ; next, they lose their mo-
 ' deration ; afterwards, they renounce all mea-
 ' sures with their old acquaintance and old
 ' principles ; and seeing themselves in magni-
 ' fying glasses, grow, in conceit, a different spe-
 ' cies from their fellow-subjects ; and so, by too
 ' sudden degrees, become insolent, rapacious,
 ' and tyrannical, ready to catch at all means,
 ' often the vilest and most oppressive, to raise
 ' their fortunes as high as their imaginary
 ' greatness (19). So that the only way to put
 ' them in mind of their former condition,

(19) See NOTE [TT].

and

‘ and consequently of the condition of other
 ‘ people, is often to reduce them to it ; and
 ‘ to let others of equal capacities share of
 ‘ power in their turn : this also is the only
 ‘ way to qualify men, and make them equally
 ‘ fit for dominion and subjection (20).’

Mischief attending frequent dissolutions in the present state of the representation.

NEVERTHELESS, if the state of the representation be essentially defective ; if elections be not *free*, it will be of no service to make them *frequent*. Such a measure, in the present state of the representation, would, perhaps, really tend to create a *grievous expence* at elections, violent *heats and animosities* both in the country and in parliament, and a pernicious *fluctuation and instability* in the English councils.

(20) CATO's Letters, N^o lxi.

C H A P. IX.

Of drawing a Line between Liberty and Power.

HAVING already considered what are the *principles* which ought to actuate the English government, and said something of its form or *nature*, it remains to be inquired what is its *object*, or the end it has in view (1).

The object of the English government.

(1) ‘ Though all governments have the same general end, which is that of preservation, yet each has another particular view. Increase of dominion was the view of Rome; war, of Sparta; religion, of the Jewish laws; commerce, that of Marseilles; public tranquillity, that of the laws of China;’ [the natural end of a state that has no foreign enemies, or that thinks itself secured against them by barriers;] ‘ navigation, that of the laws of Rhodes; natural liberty, that of the policy of the savages; in general, the pleasures of the prince, that of despotic states; that of monarchies, the prince’s and the kingdom’s glory:’ [see the difference made between a monarchy and a despotic state in Note (2) p. 4.] ‘ The independence of individuals is the end aimed at by the laws of Poland, and from thence results the oppression of the whole.

‘ One nation there is also in the world, that has for the direct end of its constitution, political liberty.’ Sp. L. b. xii. c. 5.

And

And this, I think, we may safely pronounce (not forgetting *commerce*) to be LIBERTY (2).

But LIBERTY cannot long be maintained, if unsupported by POWER. In these two words, therefore, Liberty and Power, may be said to be comprehended the sum of what is legitimate in the government of England.

A general
idea of li-
berty.

HAVING said this, it is necessary to inquire what is *liberty*: and the rather, as the matter seems to be but ill understood. ‘The English constitution,’ we are told by one Author, ‘is the only one in the records of time, which ever attained to the perfection of civil government (3);’ by another (4), that ‘we enjoy a degree of liberty, civil and religious,

(2) The word *liberty*, indeed, not only includes an idea of personal freedom, and the free and peaceable enjoyment of the property we have, but the liberty of making fresh acquisitions by commerce. See Sp. L. b. xi. c. 5. BLACK. Com. introd. s. i. p. 6. This is so true, that the protection even of *foreign* merchants is made one of the articles of liberty in *magna charta*. 9 Hen. III. c. 30. Sp. L. b. xx. c. 13.

(3) HURD’s Mor. and Pol. Dial. p. 301.

(4) Dr. PRICE’s Add. Observ. on Civ. Lib. p. 52.

‘ which

‘ which has seldom been paralleled among
 ‘ mankind ;’ while, from another quarter (5),
 one would imagine, that our liberty was, in
 a manner, ‘ irretrievably lost ;’ and indeed, I
 think, no two writers have, of late, agreed
 in defining its real nature, or proper limits.

‘ POLITICAL liberty, as relative to the
 ‘ constitution, is said to be formed by a certain
 ‘ distribution of the powers of govern-
 ‘ ment (6). But in the relation it bears to
 ‘ the *subject*,’ [which is more commonly term-
 ed *civil liberty*,] ‘ it ought to be considered
 ‘ under another idea.’ The first, political
 liberty, may be said to be the means ; civil
 liberty, the end that is aimed at. As *power*
 is that *force* of the society, which is vested in
 the executive authority, and without which,
 liberty would be but a precarious existence.

‘ THERE is no word that has admitted of
 ‘ more various significations, and has made

(5) Circ. Let. of Yorksh. Assoc. dated Nov. 1, 1782.

(6) Sp. L. b. xii. c. 1.

‘ more different impressions on human minds,
 ‘ than that of *liberty* (7).’

THE excellent Author from whom I have made this last extract, in his Book ‘ on the
 ‘ laws that form political liberty with regard
 ‘ to the *constitution*,’ informs us, that ‘ political
 ‘ liberty does not consist in an unre-
 ‘ strained freedom (8). In governments,
 ‘ that is, in societies directed by laws, liberty
 ‘ can consist only in the power of doing what
 ‘ we ought to will, and in not being con-
 ‘ strained to do what we ought not to
 ‘ will.

‘ WE must have continually present to our
 ‘ minds the difference between independence
 ‘ and liberty. Liberty, is a right of doing
 ‘ whatever the laws permit (9); and if a ci-
 ‘ tizen could do what they forbid, he would
 ‘ no longer be possessed of liberty, because

(7) Sp. L. b. xi. c. 2. Then follow some curious significations of the word *liberty*. And DE LOLME also, in his Const. Eng. b. ii. c. 5. affords us a like entertainment.

(8) See NOTE [UU].

(9) Sp. L. b. xi. c. 3. BLACK. Com. introd. p. 6. *Facultas ejus, quod cuique facere libet, nisi quid vi, aut jure prohibetur.* Inst. i. 3. 1.

‘ all

‘ all his fellow-citizens would have the same
‘ power (10).’

BUT, ‘ a government may be so consti-
‘ tuted, as no man shall be compelled to do
‘ things to which the law does not oblige
‘ him, nor forced to abstain from things which
‘ the law permits (11).’

AND, as a natural deduction from these
premises, he informs us, ‘ the political liberty
‘ of the *subject*’ [which, to distinguish it from
the political liberty that regards the *constitu-
tion*, I should term *civil* liberty (12)], ‘ is a tran-
‘ quillity of mind, arising from the opinion
‘ each person has of his safety; and that, in
‘ order to have this liberty, it is requisite,
‘ the government be so constituted, as one
‘ man need not be afraid of another (13).’

Civil liberty
defined by
Monte-
squieu.

‘ POLITICAL, or civil liberty, which is
‘ that of a *member of society*, is,’ to use the

—Sir Wil-
liam Black-
stone.

(10) ‘ As men have given up their natural independ-
‘ ence, to live under *political* laws, they have given up the
‘ natural community of goods, to live under *civil* laws.

‘ By the first, they acquired liberty; by the second,
‘ property.’ Sp. L. b. xxvi. c. 15.

(11) Sp. L. b. xi. c. 4.

(12) See the distinction made by MONTESQUIEU, be-
tween political law and civil law, Note N° 10, *supra*,
and Note N° 22, p. 279.

(13) Sp. L. b. xi. c. 6.

T

words

words of Sir WILLIAM BLACKSTONE, 'no
 ' other than natural liberty so far restrained
 ' by human laws (and no farther), as is ne-
 ' cessary and expedient for the general ad-
 ' vantage of the public. Hence we may col-
 ' lect, that the law, which restrains a man
 ' from doing mischief to his fellow-citizens,
 ' though it diminishes the natural, increases
 ' the civil liberty of mankind: but every
 ' wanton and causeless restraint of the will of
 ' the subject, whether practised by a monarch,
 ' a nobility, or a popular assembly, is a de-
 ' gree of tyranny. Nay, even laws them-
 ' selves, whether made with or without our
 ' consent, if they regulate and constrain our
 ' conduct in matters of mere indifference,
 ' without any good end in view, are laws de-
 ' structive of liberty: whereas, if any public
 ' advantage can arise from observing such
 ' precepts, the controul of our private incli-
 ' nations, in one or two particular points,
 ' will conduce to preserve our general free-
 ' dom in others of more importance, by sup-
 ' porting that state of society which alone
 ' can secure our independence. Thus, the
 ' statute of king Edward IV. (14), which for-

' bad the fine gentlemen of those times (un-
 ' der the degree of a lord) to wear pikes upon
 ' their shoes, or boots, of more than two
 ' inches in length, was a law that favoured of
 ' oppression; because, however ridiculous the
 ' fashion then in use might appear, the re-
 ' straining it by pecuniary penalties could
 ' serve no purpose of common utility. But the
 ' statute of king Charles II. (15), which pre-
 ' scribes a thing seemingly as indifferent, *viz.*
 ' a dress for the dead, who are all ordered to
 ' be buried in woollen, is a law consistent with
 ' public liberty; for it encourages the staple
 ' trade, on which, in great measure, depends
 ' the universal good of the nation. So that
 ' laws, when prudently framed, are by no
 ' means subversive, but rather introductive of
 ' liberty; for (as Mr. LOCKE has well ob-
 ' served (16)), where there is no law, there is
 ' no freedom. But then, on the other hand,
 ' that constitution or frame of government,
 ' that system of laws, is alone calculated to
 ' maintain civil liberty, which leaves the
 ' subject entire master of his own conduct,

(15) 30 Car. II. st. 1. c. 3.

(16) On Government, part iii. s. 57.

‘ except in those points wherein the public
 ‘ good requires some direction or re-
 ‘ straint (17).’

—Mr. De
 Lolme.

DE LOLME tells us, ‘ Liberty, so far as it
 ‘ is possible for it to exist in a society of be-
 ‘ ings, whose interests are almost perpetually
 ‘ opposed to each other, consists in this ; that
 ‘ *every man, while he respects the persons of*
 ‘ *others, and allows them quietly to enjoy the*
 ‘ *the produce of their industry, be certain him-*
 ‘ *self likewise to enjoy the produce of his own*
 ‘ *industry, and that his person be also secure* (18).’

Whether the
 subject en-
 joys civil
 liberty.

ADMITTING, then, that true *liberty* (civil
 liberty) consists in perfect freedom, and secu-
 rity to do and have what is right, without
 any prohibition or restraint, except in those
 things which may be injurious to either the
persons or the *property* of others; and that this is
 the great object of the laws and the constitu-
 tion; it is important to know, whether we
 actually enjoy this *liberty*; that is, whether

(17) BLACK. Com. b. i. c. 1. p. 125.

(18) Const. Eng. b. ii. c. 5. p. 245.

we have the free and reasonable enjoyment and security of those rights which affect our *persons* and *properties*, and which are vested in us by the immutable laws of nature, as far as is consistent with a state of society.

SINCE the abolition of the courts of star-chamber and high-commiffion, and the security afforded by the *habeas corpus* act (that *palladium* of *personal liberty*), the bill of rights, the act of settlement, and the acts for making the judges independent, the *person* of the subject appears to be in little danger; unless by disobedience to the laws, he shall forfeit their protection. And since the stat. 25 Edward I. c. 5 & 6. the stat. *de tallagio*, 34 Edward I. stat. 4. c. 1. and the 14 Edward III. stat. 2. c. 1. the petition of right, the bill of rights, the *nullum tempus* act, and the several acts for abolishing the various prerogatives by which the king was formerly enabled to raise money on the subject, every man's *property* is, by the law, secure; unless (*as it is said*) he, or a person *representing him*, shall consent to give a part of it, in order to enable the collective force of the society, the better to protect the whole.

WITH respect to *private rights*, by an excellent civil and criminal jurisdiction, the subject enjoys almost the *perfection* of civil government (19). All arbitrary power over the *person and property* of every individual has *apparently* ceased, and there prevails, in reference to us, at least as *subjects by law* (20), a true system of *liberty*.

Political liberty

BUT it is necessary we should enjoy, not only liberty as it regards the citizen, or civil liberty, but also as it respects the constitution, or, in other words, political liberty. For, if the subject be free, and not the constitution, 'the subject, though free in fact, is not so by right (21);' consequently, liberty must be held but precariously under such a tenure.

defined.

WHAT then is political liberty? That nation may be said to enjoy political liberty, when the great powers of government, the

(19) HURD'S Mor. and Polit. Dial. p. 301. See NOTE [VV].

(20) MONTESQUIEU, after giving an accurate account 'of the constitution of England,' says, 'It is not my business to examine, whether the English *actually* enjoy liberty, or not. It is sufficient for my purpose to observe, that it is established by their *laws*; and I inquire no further.' Sp. L. b. xi. c. 6.

(21) Sp. L. b. xii. c. 1.

legislative,

legislative, or that which, in decrees, edicts, orders, or laws (22), freely promulges the *will of*

(22) ‘ Law, in *general*, is human reason ; in as much as it governs all the inhabitants of the earth : the political and civil laws of each nation ought to be only the particular cases in which this human wisdom is applied.’ Sp. L. b. i. c. 3.

Sir WILLIAM BLACKSTONE defines *municipal law* to be ‘ a rule of civil conduct, prescribed by the supreme power in a state, *commanding what is right, and prohibiting what is wrong.*’ Com. introd. f. 2.

But ‘ men are governed by several kinds of laws ; by the law of nature ; by the divine law, which is that of religion ; by ecclesiastical, otherwise called canon law, which is that of religious polity ; by the law of nations, which may be considered as the civil law of the universe, in which sense every nation is a citizen ; by the *general political law*, whose object is that human wisdom which has been the foundation of all societies ; by the *particular political law*, which relates to each society ; by the law of conquest, founded on this, that one nation has been willing and able, or has had a right to offer violence to another ; by the civil law of every society, by which a citizen may defend his possessions and his life, against the attacks of any other citizen ; in fine, by domestic law, which proceeds from a society’s being divided into several families, all which have need of a particular government.

‘ There are, therefore, different orders of laws, and the sublimity of human reason consists in perfectly knowing to which of these orders the things that are to be determined ought to have a principal relation, and not to throw into confusion those principles which should govern mankind.’ Sp. L. b. xxvi. c. 1.

the society, and the *executive*, or that which is to carry these decrees, edicts, orders, or laws into execution, are so formed and distributed, as freely, independently, and without deviating from their duty, to perform their office. The latter power, as affecting the *subject*, civilly or criminally, is called the *judicial* power; as it concerns the *national government*, simply the *executive*.

When both
civil and po-
litical liberty
enjoyed.

WHEN the legislative, executive, and judicial powers are rightly constituted and distributed, the nation has taken a good step towards obtaining *political* liberty. When these powers, particularly the legislative and judicial, are also properly executed, *in regard to the persons and property of the people*, the *subject* may be said to enjoy *civil* liberty. And when these three powers *in matters of government*, especially the legislative and executive, are properly constituted, and freely and independently executed, then the nation will have its will, not only duly *promulgated*, but also duly *executed*; and possess both *political liberty and power*.

C H A P. X.

The same Subject continued.

IN despotic or tyrannical (1) governments (2), the three powers are united; as, at present, in Turkey; and, in former times,

The cause of
tyranny.

(1) I here mean by *tyranny* what is meant by the term in its usual acceptation, a government in every department, legislative, executive, and judicial, by will, and not by law; and not in the sense of the Greeks and Romans, who gave this name to all who had subverted a democracy.

‘ There would be an end of every thing, were the same man or the same body, whether of the nobles or of the people, to exercise the three powers, that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals.’
Sp. L. b. xi. c. 6.

But ‘ there are two sorts of tyranny; the one real, which arises from the oppressions of government; the other is seated in opinion, and is sure to be felt whenever those who govern, establish things shocking to the turn of thought, and inconsistent with the ideas of a nation.’ Sp. L. b. xix. c. 3.

‘ All punishment, which is not derived from necessity, is tyrannical. The law is not a mere act of power; things, in their own nature indifferent, are not within its province.’ Sp. L. b. xix. c. 14. EDEN’s Penal Law, vol. iii. p. 298. 302. BLACK. Com. b. i. c. 1. p. 125.

(2) Sp. L. b. xi. c. 6. BLACK. Com. b. i. c. 7. p. 269.

in

in this country (3). But wherever this happens, there can be no *liberty*. *Power* only is regarded. 'The principle of the government is *fear* (4)'. 'The *will* of the prince is the sole depositary of the *laws*. The subjects groan under the weight of a most frightful oppression (5).

Constitution
of modern
monarchies.

IN modern monarchies, the prince is invested with no more than the legislative and executive powers (6). But here, likewise, there can be little public liberty. Instead of enjoying that tranquillity of mind, which the opinion we have of our security produces, 'apprehensions arise, lest the monarch should enact tyrannical laws, to execute them in a tyrannical manner (7)'. Whenever the whole legislative and executive authority is united in one and the same person, as in some monarchies, or one and the same body of men, as in aristocracies, we shall always find the persons so invested, more careful to maintain their own *power*, than in-

(3) See NOTE [WW].

(4) Sp. L. b. iii. c. 9. (5) Ibid. b. xi. c. 6.

(6) Sp. L. b. xi. c. 6. BLACK. Com. b. i. c. 7. p. 269.
See NOTE [XX]. (7) Sp. L. b. xi. c. 6.

clinable to advance *public liberty*. The *laws*, and the *taxes*, which are to affect the people, and therefore ought to be established by the will or consent of every member of the community 'who is supposed to be a free agent (8),' are established only by the will, perhaps the caprice of a single individual (9). The public, though so greatly affected, is as if it were wholly unconcerned. The people can neither in person, nor by their representatives, propose, resolve, reject, or impeach. The kingdom enjoys scarcely any liberty, civil or political.

BUT in England the government has been so happily constituted, that were the *legislative* body, which may be said to be composed of the *people*, as well *formed*; the *executive* power, as *free*; and the *fiscal*, which is a branch of the executive, as well subdivided, as the three great powers of government, the legislative, executive, and judicial are well distributed, perhaps human wisdom could not

—Of Eng-
land.

(8) Sp. L. b. xi. c. 6. BLACK. Com. b. i. c. 2. p. 158.

(9) BLACK. Com. b. i. c. vii. p. 269. Sp. L. b. xii. c. 6. Set NOTE [YY].

contrive a frame of government so well adapted to produce both *liberty* and *power*; liberty to the subject, and power to the state.

THAT the subject might enjoy as much liberty as is consistent with a state of society, it has been provided, that the will of the society shall be consulted in the making of laws, which are to bind the society; whether they be designed as fundamental political rules for the government of the nation, or civil institutions for the guidance of the subject. The people, indeed, do not actually exercise this function, immediately, in person; for, though this may be usual in small republics, it is impracticable where the people are numerous, and at remote distances from one another; but it is exercised by means of persons, chosen, as a kind of committee, by and amongst themselves, as their representatives; persons themselves to be affected by every resolution they may form. Binding men by their own interest was thought the most likely way to secure the *virtue* of the representatives, and, consequently, the *liberty* of the people. Nor

was this the only benefit resulting from a representation ; ‘ the people, by this means, obtained the great advantage of discussing affairs ; for which, collectively, they are extremely unfit ; which is one of the greatest inconveniencies of a democracy (10).’

LEST, however, a body so fluctuating as that which is temporarily chosen to represent the people, might want the knowledge that is attained by experience ; and, being governed by popular prejudice or caprice, might produce any undigested, contradictory, or injurious resolutions, another body, permanent in its nature, eminent for birth, property, piety, wisdom, and valour, was wisely appointed to check their proceedings (11). This government, in fine, was, happily, to

(10) Sp. L. b. xi. c. 6. The power of the people being checked by their representatives ; their representatives, by the house of Lords (the feudal *peers*) ; and both by the Crown ; shews ‘ the great advantage which this government has over the ancient democracies, in which the people had an *immediate* power ; for when they were moved and agitated by the orators, these agitations always produced their effects.’ Sp. L. b. xix. c. 27.

(11) See NOTE [ZZ].

extract the essence of every regular government in the world, *an equality of interest* between the representatives and their constituents, and consequently the *virtue of democracy*, with a frequent recognition of the delegated power by the people ; the dignity, integrity, and permanent *wisdom of aristocracy* ; and the majesty and strength, or *power, of monarchy*. Without the consent of all these, no law was to be binding on the people (12).

UNDER a government thus constituted, no wonder it was discovered, ‘ that the true function of a prince was to appoint judges, and not to sit as judge himself (13) ;’ ‘ that

(12) MONTESQUIEU, speaking of modern monarchies, which he traces from the German nations that conquered the Roman empire, expresses himself thus: ‘ At first the Gothic government was mixed with aristocracy and monarchy ; a mixture attended with this inconveniency, that the common people were bond-men. The custom afterwards succeeded, of granting letters of enfranchisement, and was soon followed by so perfect a harmony between the civil liberty of the people, the privileges of the nobility and clergy, and the prince’s prerogative, that I really think there never was in the world a government so well tempered as that of each part of Europe, so long as it lasted.’ Sp. L. b. xi. c. 8.

(13) Sp. L. b. xi. c. 11.

‘ the

‘ the statute of 16 Charles I. c. 10. which
 ‘ abolished the court of star-chamber, should
 ‘ take care effectually to remove all judicial
 ‘ power out of the king’s privy council (14);’
 that, instead of being ruled by the private
 opinion of any judge, ‘ the people who live
 ‘ in society, should know exactly the obliga-
 ‘ tions it lays them under (15);’ in a word,
 that there should be both a free legislature
 and a free judicature. The Author lately
 quoted, who was an admirable judge, accord-
 ingly tells us, ‘ that liberty is the direct end
 ‘ of the English constitution (16);’ ‘ that
 ‘ England is the freest nation that ever ex-
 ‘ isted (17).’

IT is an observation of Gravina (18), that
*the conjunction of the WILLS of individuals consti-
 tutes what we call a CIVIL state.* And, doubt-
 less, where those wills are duly expressed by
 a well-constituted *legislature*, and duly exe-
 cuted by an impartial *judicature*, the subject
 will enjoy *civil liberty*.

(14) BLACK. Com. b. i. c. 7. p. 269.

(15) Sp. L. b. xi. c. 6. (16) Ibid. b. xi. c. 5.

(17) Ibid. b. xii. c. 20. (18) Ibid. b. i. c. 3.

BUT the most perfect manner of conveying the will of the society, would be of little avail, without some effectual means of enforcing the execution of that will. It is, therefore, I suppose, that Gravina observes, that *the conjunction of the particular FORCES of individuals forms the POLITICAL State* (19). With us, accordingly, the force of the society is collected and united together under the grasp of one sceptre.

AGAIN, observe the wisdom of our ancestors. Satisfied that unanimity of counsels, uniformity of measures, secrecy, and decision in resolving, and strength or vigour in the execution, could no where be expected, with so much probability, as in one person ; ‘ that
 ‘ power, when parcelled and diffused, is never
 ‘ so well repressed and regulated, as when it
 ‘ is confined to a sole indivisible seat (20);’ they determined to invest the executive power in one person. Well knowing, where the legislative and executive powers are vested in

(19) Sp. L. b. i. c. 3.

(20) DE LOLME, Const. Eng. b. ii. c. 19. p. 504.
 different

different persons, the danger of the legislative power usurping the executive ; and aware, if every part of the constitution were not free, as well as the subject, the liberty of the subject, as at Rome (21), must perish with that of the constitution ; the prince, as well as the parliament, was established independent and *free*. To prevent the legislative body from accroaching the executive authority, the monarch was shielded with the power of giving a negative to any proceedings which might effect his independence. To secure the monarch's virtue, the same policy was observed, as in constituting the parliament. Human nature was not forced, it was followed. As there must be a power or force to protect the civil rights, the life, liberty, and property of every individual, and also the political interests of the community at large, it was thought it would be more certain to be met with in one great superior, than many equals ; it being true to a proverb, that in every affair, civil, political, ecclesiastical, military, and domestic, *par in parem non habet potestatem*.

(21) Sp. L. b. xi. c. 18.

Power among equals is only the strength of party; and parties do not always act on public principles. In general, among parties, the ignominy of injustice loses its sting; and private interest and ambition outweigh the public good. A system, therefore, which was to take the executive power of government from party, and vest it in the majesty of one person, was the best calculated to secure *personal liberty*. Were an infringement of the rights of *property* to be feared, from a profusion to favourites, the greatest prodigality to the favourites of one man, would be a trifle to that which would be required for a whole house of commons, with their numerous train of relations, expectants, and friends. Were personal avarice to be dreaded, one voracious appetite was more easily satisfied than five hundred. To prevent, however, all infringement of property, and preserve personal liberty, the monarch was to be placed in a situation so supereminently great, that he should be superior to every *selfish private* consideration; superior to every possible temptation of betraying his country. Intestine discord, or foreign force, could not annoy his subjects,

subjects, and the king be happy. In short, his own interest was to be that of the community : his real *interest*, to make his people happy ; his greatest *ambition*, the glory of his kingdom.

ON the other hand, our ancestors were equally cautious that the executive power should not assume the legislative. Both were to exist, and be free and independent. The one was to confer *power*, the other *liberty*. And this was effected by the means of money.

HAD the *executive* power had the *raising*, as well as the *application* of the public revenue, and no effectual provision had been made for assembling the legislative bodies, they would, probably, never have been permitted to meet (22). And thus the two

(22) ' Were the legislative body to be a considerable time without meeting, this would put an end to liberty. For one of these two things would naturally follow ; either that there would be no longer any legislative resolutions, and then the State would fall into anarchy ; or that these resolutions would be taken by the executive power, which would render it absolute.' Sp. L. b. xi. c. 6.

powers being united in one person, *liberty* could not have existed.

HAD the *legislative* assemblies, or either of them, had the *disposal*, that is, the *application*, as well as the raising and *appropriation* of the taxes, they would have enjoyed the executive branch of government; and both the powers would have become united in the legislative body; who, not being all in the exalted situation of a king, private views would have taken place of public virtue, great contentions convulsed the empire, and, terminating in anarchy, the consequence would have been a total want of *both power and liberty*.

To prevent either inconvenience, the power of the purse is divided. That part of the legislature, which is composed of the representatives of the people, enjoys the sole power of granting the money to supply the exigencies of the State. When granted, the executive power has the sole disposal, or rather application of it.

BUT

BUT as either of these two powers might be liable to abuse, proper remedies have been provided.

IN case of a criminal disposition of the public money (23) by any of the king's ministers, they are subjected to the inquisitorial tribunal of the house of commons. The house, indeed, is not permitted to censure the king; for this would have destroyed his constitutional independence; but what is more beneficial to the public, they may impeach, and bring to punishment, his evil and pernicious ministers (24). A device much more eligible, than the executive power being directed by persons irresponsible!

To prevent unworthy motives in a factious *aristocracy*, the people themselves, by their *representatives*, were to be the judges of the necessity both of the laws, and of the taxes; how much money the real necessities of the State might require, and the ways and means by which it might be raised with the least pre-

(23) See NOTE [AAA].

(24) BLACK, Com. b. i. c. 2. p. 155. Sp. L. b. xi. c. 6.

judice to the people. To secure the representatives from *faction*, they were not to be returned through any *permanent* private interest, but were to be freely elected by the public. To secure them from *corruption*, the taxes were to charge themselves; they were to be men of property, who might be affected either by too much prodigality or parsimony; men whose peculiar private interest was to be involved in that of the public. Like a jury, they were to be disinterested, and indifferent to every party; and to preserve them so, they were (if I may be permitted to use the expression), to be impanelled only for one session or trial. In the words of an able Writer, the power was thought so great, as to be ‘compensated only by the brevity of its duration (25).’ If the power were abused, a remedy was provided so simple, that it required, ‘in its application, a knowledge only of matters of fact, and was therefore entirely within the reach of the abilities of the people; but a remedy, at the same time, which was the most effectual that could be applied: for,

(25) Sp. L. b. ii. c. 3.

‘ as the evils which might be complained of,
 ‘ would arise merely from the peculiar dispo-
 ‘ sitions of a certain number of individuals, to
 ‘ set aside those individuals, was to pluck up
 ‘ the evil by the roots (26).’

C H A P. XI.

The same Subject concluded.

SUCH, I apprehend, is the true constitution of the government of England. Whether the three great powers be well formed and distributed, and freely exercised; whether the subject enjoys *liberty*, and the State *power*, must be left to the determination of the discerning reader.

Consequences resulting from it.

As the laws made by the legislators affect themselves, there will be no fear, but in all things which concern the *liberty of the subject*, and in which the legislators can have no separate advantage, they will be well made, and, in general, duly executed, and hence the perfection of civil liberty in England.

(26) DR LOLME, Const. of Eng. b. ii. c. 11. p. 290, 4th edit.

BUT, should the greatest part of the representative body of the people, instead of being the real *temporary* representatives of the public, become a *permanent* body returned through private interest; should the whole popular assembly be chosen, not for a *short* period, but for a *long* space of time (1); the constitution would be changed; the democratic would be turned into an aristocratic assembly. If the members should then, unfortunately, happen to be no longer governed by public virtue, but by private interest, *power* might, perhaps, be sought for, rather than *liberty*. Under the pretence of grievances, and the colour of correcting the errors and misconduct of ministers, there might lie concealed orders. The power wisely given, of granting subsidies, might be prostituted to the

(1) Dr. PRICE is of opinion, if the representatives of the people be chosen for long terms (especially if they be chosen by only a part of the community), 'and, during that term, they be subject to no *control* from their constituents, the very idea of liberty will be lost; and the power of choosing representatives becomes nothing but a power lodged in a *few*, to choose, at certain periods,' [as experience, indeed, has sometimes proved,] 'a body of MASTERS for themselves and the rest of the community!' *Observ. on Civ. Lib. introd. p. 10.*

basest

basest purposes. ‘ Instead of the *wealth* of individuals constituting the public treasure, the public treasure might become the patrimony of private persons. The members of the commonwealth might riot on the public spoils, and its strength might become the power only of some citizens, and the licentiousness of the whole community (2).’ Should the form of government, nevertheless, remain, most likely it would be carried on wholly either by faction, or corruption, or both. Under such a frame of government, the liberty of the subject might a while be preserved; but *power* having become the chief object of attention, and the *liberty of the constitution* being overturned, the *liberty of the subject* would, in time, also perish.

WE may rest assured, that the liberty of the subject, or civil liberty, cannot very long be preserved without political liberty; without the great powers which constitute the government be free. And, judging from the evidence which history affords, perhaps, not-

The political liberty of the prince as necessary as that of the parliament,

(2) Sp. L. b. iii. c. 3.

Instances in
the reigns of
Q. Eliz. and
Cha. I.

withstanding the bill of rights, one may venture to affirm, it is as necessary to the preservation of civil liberty, that the political liberty of the prince should be supported, as that of the parliament. For, though imprisoning members of parliament for their parliamentary conduct by Q. Elizabeth, and the long intermission of parliaments by Charles I. certainly took away the political liberty of parliament; yet, in each instance, it is well known ‘the kingdom enjoyed the greatest calm, and the fullest measure of felicity that any people, in any age, for so long time together, have been blessed with (3).’ But when the parliament took away the political liberty of Charles I. the government fell into the utmost confusion; ‘the strength of the State became only the power of private citizens;’ the liberty of the constitution, and of the whole community, was turned into licentiousness; and quickly followed, in regular progression, the most violent faction, a civil war, the anarchy of a commonwealth, and the tyranny of a single ruler.

(3) Lord CLAR. Hist. Rebel. vol. i. b. i. p. 58.

KNOWING, then, what happened in the time of Charles I. let us profit by experience. This unfortunate monarch, sensible that the power of the Crown, and that which was claimed by the house of commons, were incompatible, complained, 'that the commons imitated the bad example of all their predecessors of late years, in making continual encroachments on his authority, in censuring his whole administration and conduct, in discussing every circumstance of public government, and in their indirect bargaining and contracting with their king for supply (4):' and, therefore, in order 'that the privileges on all parts,' [that is, the privilege of the parliament and the prerogative of the crown] 'might be so stated as to preserve that free correspondence which had been used of old,' he sent repeated messages to both houses, as the earl of CLARENDON (5) informs us, to 'propound

(4) HUME's Hist. of Gr. Br. vol. vi. c. 53. p. 357.

(5) Hist. of Rebel. vol. i. p. 309. 369. 433. 'In some of these publications,' said to be penned by lord CLARENDON, 'is found the first regular definition of the constitution, according to our present idea of it, that occurs in any English composition; at least, any published by authority.' HUME's Hist. of Eng. vol. vi. p. 585, Note [FF],

‘ to them, that they would, with all speed,
 ‘ fall into a serious consideration of all those
 ‘ particulars which they thought necessary,
 ‘ as well for the upholding and maintaining
 ‘ of his majesty’s just and regal authority,
 ‘ and for the settling of his revenue, as for the
 ‘ present and future *establisbing their privi-*
 ‘ *leges* (6).’

BUT this was never done, or attempted. So far indeed as related to the *king’s prerogative*, the house of commons were, or rather had been, sufficiently attentive, in passing the petition of right; the acts for abolishing the high-commission, the court of star-chamber, and the oppressions in the stannery court; for fixing the meets and bounds of forests, and the nature of forest laws; for relinquishing the long used right of laying impositions upon foreign trade; the prerogatives concerning ship-money, the office of clerk of the market, the ancient fœdal power of conferring the order of knighthood, and the prerogative of

(6) See NOTE [BBB].

making salt-petre and gun-powder ; and, finally, the act for triennial parliaments, and that more fatal one, which rendered them perpetual.

BUT as to settling the privilege of parliament, in the words of DE LOLME, ‘ they were careful not to touch any point which might materially affect their own authority (7).’ It was not an easy matter to part with power. On the contrary, they were most anxious to increase it. Instead of complying with the king’s request of January 20, and ascertaining the *privileges of parliament*, as well as the *prerogatives of the crown*, the commons, on the 26th of January, desired the king would put the Tower and other principal forts of the kingdom, and all the militia, into the hands of such persons as they should *recommmend* to him (8). When the king sent a message to the two houses, dated the 25th of August following, proposing, that some fit persons might be appointed by each

(7) Conf. Eng. b. ii. c. 4. p. 234.

(8) CLAR. Hist. Rebel. vol. i. b. iv. p. 312.

sive to treat of, and settle the differences subsisting between them, both houses peremptorily refused to name any, unless the king would first submit himself entirely to their authority (9). Afterwards, when, in the course of the civil war, they did condescend to name commissioners, the treaty broke off; the commissioners, on the king's part, declaring, by a written paper, which, at the conclusion of the conference, they delivered to the commissioners appointed by the parliament, 'that, after a war of so many years, entered into, as was pretended, for the defence and vindication of the laws of the land, and the liberty of the subject, in a treaty of twenty days they had not demanded *any one thing*, that, by the law of the land, they had the least title to demand; but insisted only on such particulars as were *against* law and the established government of the kingdom (10).' And, on this treaty failing, although, to accomplish a peace, and settle all disputes, the king offered to trust

(9) CLAR. Hist. Rebel. vol. ii. b. vi. p. 7, 8, 9. fol. edit.

(10) Ibid. b. viii. p. 461.

even his own person in the hands of the parliament, and for their better security in his going to them, to dismantle his garrisons, and that his followers should not exceed three hundred persons, his proposal was rejected (11). In few words, the commons, at last, effectually united in themselves the legislative and the executive authority.

BUT what may be tolerable in one person, was insupportable in a multitude. It was soon (12) found, that this form of government was not calculated to give, in any degree of perfection, either liberty or power. Such a government, therefore, could not have long continuance.

‘ A VERY curious spectacle it was,’ says MONTESQUIEU, ‘ in the last century, to behold the impotent efforts the English made for the establishment of democracy. As those who had a share in the direction of public

(11) CLAR. Hist. Rebel. b. ix. p. 574.

(12) It was not twelve years from the martyrdom of Charles I. to the restoration of Charles II.

‘ affairs were void of all *virtue*, as their ambition was inflamed by the success of the most daring of the members (13); as the spirit of a *faction was suppressed only by that of a succeeding faction*, the government was continually changing; the people, amazed at so many revolutions, sought every where for a democracy, without being able to find it. At length, after a series of tumultuary motions and violent shocks, they were obliged to have recourse to the very government which they had so odiously proscribed (14).’

Of the king's
legislative
and executive
power.

NOTWITHSTANDING all this dear-bought experience, the constitution of the English government seems, as yet, to be but imperfectly known. Some imagine, that the king is vested with an almost boundless authority; while others conceive the power of the monarch is confined within the narrowest limits; that, in his *legislative* character, he can barely call, prorogue, and dissolve the parliament, and say *no* when they meet; in his *executive*

(13) Cromwell.

(14) Sp. L. b. iii. c. 3.
capacity,

capacity, little more is required from him than to appoint his ministers.

YET this, small as it may seem, is by some thought too great ; such is the meretricious lust of power, even liberty is made a pander to procure it. One branch of the government is, to have the liberty to take away the liberty of another. The liberty of the *supreme* executive magistrate, and consequently the power of the State, is to be destroyed ; although such liberty consists only in appointing the *subordinate* executive ministers, who are responsible for their conduct to the Public ; and although, against them, even malice itself can frame no accusation.

FROM one side we are told, that, in the exercise of the royal negative, which is the monarch's own personal act, he is as free, absolute, and uncontrollable, as either of the other branches of the legislature ; that, in the exercise of that part of his *executive* authority, which consists in appointing the ministers who are to execute the measures of government, and is likewise his own personal

X act,

act, he is equally free and uncontrollable; and that those acts only, which are performed ministerially by others, are any way impeachable or questionable; while others scruple not to affirm, that ‘ the several powers necessarily vested in the monarch, whether for the execution of the laws, or for the *nomin-
nation to magistracy and office*, or for conducting the affairs of peace and war, or for ordering the revenue, should all be exercised on grounds different from *the likings
or policies of a COURT* (15).’ Nay, the Author to whom I allude, whose performance is the rather to be taken notice of, as it is said to contain the political creed of a par-

(15) B—E’s *Thoughts on the Cause of the Discontents*, p. 41. So, whatever pretences were made use of, ‘ the real aims of the tribunes at Rome, were at the consulship, the prætorship, the priesthood, and other offices of executive power, which they were intended to controul, and not to share.’ (DE LOLME, *Const. Eng.* b. ii. c. 15. p. 333. 4th edit.) ‘ But when all their views of that kind were accomplished, the republic did not for all this enjoy more quiet, nor was the interest of the people better attended to than before; new struggles then arose for actual admission to those places; for procuring them to relations, or friends; for governments of provinces, and for command of armies.’ DE LOLME, *Const. Eng.* b. ii. c. 15. p. 335. 4th edit.

ticular party (16), goes so far as to declare, that *power* ought to be the 'first purpose of' what he calls 'every honourable connection (17).' The reason he gives, indeed, is somewhat singular; but, perhaps, it may serve to shew the principles by which he is governed. Take his own words: 'In *arbitrary* governments, 'the constitution of the ministry follows the 'constitution of the legislature; and,' (strange as the reference may be!) 'it must be so in 'every sort of government (18).' Instead of looking upon the house of commons as the guardians of *liberty*, this Author seems to consider them as invested with every *power* of the State; and, in a manner, the sole governors of the kingdom. 'As *power*,' says he, 'is attached to certain situations, it is a 'duty to contend for these situations (19).' 'It is

(16) The dangerous tenets maintained in this pamphlet were lately introduced openly into the house of commons, in the form of a motion, or *representation*, as it was called, of an uncommon length, by Mr. BURKE.

(17) B——'s Thoughts on the Cause of the Discontents, p. 110.

(18) Ibid. p. 43. See NOTE [CCC].

(19) B——'s Thoughts on the Cause of the Discontents, p. 111.

‘ the *first* duty of parliament to refuse to support government (20), until this *power* be obtained (21).’ Another avers, that the house of commons ought to enjoy a negative on the king’s nomination of ministers. In the time of Charles I. it is true, the parlia-

(20) See the very contrary to this opinion in nearly the last words of this performance. If, however, we may believe the *Annual Register* (for the year 1782, p. 185.), Mr. Fox, in the house of commons, in giving the reason for his resignation, when the earl of Shelburne was appointed prime minister, said, ‘ That those who went ‘ into office on public principles,’ [and who would acknowledge they went into office on any other than public principles?] ‘ not only had a *right*, but that it was their ‘ *duty*, to be satisfied, that none were introduced into the ‘ cabinet who were hostile to those principles.’ While the earl of Shelburne, in the upper house, the day following, speaking on the same subject, and saying, as we learn from the same authority, p. 187. that ‘ he could ‘ not lightly give up all those constitutional ideas, which, ‘ for seventeen years, he had imbibed from his master in ‘ politics, the late earl of Chatham ;’ acquainted the house, that ‘ that earl had always declared, that this country ‘ ought not to be governed by a party or faction ;’ and added, ‘ if the power which *others* wished to assume, of ‘ vesting in the cabinet the right of appointing to all ‘ places, and filling up all vacancies, should once be ‘ established, the king must then resemble the king of the ‘ Marattas, who had nothing of sovereignty but the name.’

(21) B——E’s Thoughts of the Cause of the Discontents, p. 44.

ment

ment said the same thing, expressing it only in other words. Then, ministers of state were to be *approved* by both houses of parliament. In a late parliament, ‘ a firm, efficient, extended, and united administration (22),’ could be formed only by ‘ a coalition of parties; a coalition of great and comprehensive influences; a coalition of the heads of great and commanding bodies (23).’ Every action of such men points to the same object, namely, to aggrandize the power of the house of commons, and depreciate that of the crown. The royal negative was lately said to be useless, if not dangerous. It was unconstitutional to allow the subject, even though such subject were a peer of parliament, the liberty of giving, or the sovereign the liberty of receiving, advice or information, though in circumstances of ever so great moment, unless from persons approved by parliament, or by ministers who had parliament’s ‘ *confidence*.’ But, on the other hand, parliament was immaculate. Every thing that would increase their power,

(22) See some late resolutions of the house of commons.

(23) Lord North’s speech.

was to be encouraged. ‘ The boroughs were
 ‘ an useful nursery for bringing forward suc-
 ‘ cessions of genius to parliamentary digni-
 ‘ ty (24).’ The addition of an hundred
 members to the house of commons, was an
 advisable measure, *because it would increase*
the power of the parliament; or, to give it a
 more popular phrase, because it would in-
 crease the power of the *people*.

BUT let us consider whence comes this
 doctrine; if from members of parliament
 possessing talents for debate, or holding here-
 ditary or permanent seats in the popular as-
 sembly, may they not feel their own conse-
 quence in that of the house of commons?
 May they not conceive that the increasing,
 what may be called the power of the *people*,
 may substantially increase *their own* power?

LET every man, therefore, make use of
 his own understanding; remember the arts of
Pisistratus, the tyrant at Athens, and *Oliver*
Cromwell; that every faction is always go-

(24) Mr. B — x’s speech in the house of commons,
 Angl. Rediv. p. 43.

verned by some great leader, ' who is the
 ' more absolute, in proportion as the nature of
 ' his power is less clearly ascertained (25).'
 As power must be trusted somewhere, let us
 consider, whether it be more to be dreaded
 in a contentious multitude, where all the hu-
 man passions, hatred, envy, jealousy, an ambi-
 tious desire of riches and honours, and a never-
 ceasing party-spirit, constantly agitate the go-
 vernment ; or in the hands of a single person,
 who, being in the elevated situation of a king,
 is to be considered as superior to all merce-
 nary motives, and as desirous of peace and
 tranquillity, as those who oppose him wish
 for the contrary. Let us remember we are
 told, by one who is seldom mistaken (26),
 that ' it is the advantage of a free state, that
 ' the revenues are employed in it to the best
 ' purposes, and that it admits of no favour-
 ' ites ; but that when the contrary is seen,
 ' and instead of the friends and relations of a
 ' prince, great fortunes are amassed for the

(25) DE LOLME, *Const. Eng.* b. ii. c. 14. p. 321.
 4th edit.

(26) MONTESQUIEU's *Reflections on the Causes of
 the Rise and Fall of the Roman Empire*, p. 27.

‘ friends and relations of all persons who have
 ‘ any share in the government, *an universal*
 ‘ *ruin must ensue* ; that the laws are then eluded
 ‘ more dangerously, than they are infringed
 ‘ by a sovereign prince, who being always
 ‘ the greatest citizen in the State, is most
 ‘ concerned to labour at its preservation.’ In-
 terested men may tell us a different story ;
 but we may depend upon it, that power in
 many hands will be as likely to be abused,
 and, if abused, will be as unlikely to be re-
 medied, as when intrusted to a single indi-
 vidual.

THAT power is not the less likely to be
 abused, for being in the hands of many, we
 may take the word of the Author of *Thoughts*
on the Cause of the Discontents, himself (27),
 when he tells us, that ‘ all men possessed of an
 ‘ uncontrouled discretionary power, leading to
 ‘ the profit and aggrandizement of their own
 ‘ body, have *always* abused it (28).’

If abused, we are told (29), that ‘ submis-
 ‘ sion will not only be as grievous, but resist-

(27) Page 84.

(28) See NOTE [DDD].

(29) Dissertation on Parties.

‘ance much more difficult, when the *legislature* betrays its trust, than when the *king* alone abuses his power.’

AND the truth is, that if the legislative assemblies, or either of them, should ever acquire a share of the executive authority, and so become, as it were, *partners* in power with the Crown, farewell liberty!

POWER would immediately become the sole object to which every individual would direct his attention. Personal liberty, and the security of private property, for which our ancestors have frequently so gloriously bled, would be deemed fanciful, and unfit to be the primary objects of government. Royal charters, though confirmed by repeated acts of parliament, and rendered void by no acts of forfeiture, would confer no security on *property*; the *habeas corpus act*, no *personal safety*; and the *liberty of the press* (a liberty which, allowing every one openly to deliver his opinion of public transactions, commits, in some measure, to the people at large, censorial,

forial, inquisitorial, legislative, executive, and judicial authority (30); and without which, our other liberties could never be sufficiently sifted, and, consequently, sufficiently understood and protected), would be stigmatised and abolished.

‘AMIDST the alarms that may, at particular times, arise from the power of the Crown, let it, therefore, on the one hand, be remembered, that even the power of the Tudors was opposed and subdued; and, on the other, let it be considered as a fundamental maxim, that, *whenever the prospect of PERSONAL POWER shall offer to the view of the members of the legislature, or, in general, of those men whom the people must trust, even hope itself is destroyed* (31).’

MEN, however, are not wanting, who, though without seats in parliament, seem to think no power can be too great for the house of commons. A considerable body of men have lately countenanced such doctrines, by declaring, that it is the constitutional office of

(30) See NOTE [EEE].

(31) DE LOLME, Const. Eng. p. 450.

the lower house of parliament 'to watch and ' *controul* the government (32);' by which, I understand, is meant the Crown. But, is this the language of the constitution? The house of commons have certainly a right to watch over every part of government, ecclesiastical, civil, political, maritime, and military. As a *legislative* body, they have a right, in every case, to propose laws; and should the executive power engage in any expensive project they might disapprove, they have a right to withhold those supplies, without which the scheme could not be carried into execution. And, as an *inquisitorial* power, they have a right to inquire how far the ministers, employed by the executive power, have executed the laws, civil or political, which have been enacted. But, will it be said, they have any other right of controul? By the bill of rights, no tax, no army, can be raised without their consent: but does it, therefore, follow, that, in the true spirit of the constitution, they have a 'right' (33) to

(32) Circ. Let. Yorksh. Assoc. dated Nov. 1, 1782.

(33) See the late Resolutions of the H—se of C—s.
use

use their privileges, so to *controul* the Crown, as to strip it of its just prerogatives (34); and obtain, not any liberty for the subject, but power for themselves? Would not this be a conduct just as reprehensible, as that of king Charles I. in raising money by his prerogative, and attempting to rule without a parliament? But when at the Revolution the constitution was settled by the bill of rights, this was a case which was never supposed. The prevailing party at that time, notwithstanding the recent example before them, could not, it seems, conceive it possible for the people's representatives to be so absurd as to subvert the fundamentals of government, and dissolve

(34) It must, however, be observed of the Yorkshire Association, that, from the late election of members for the county, it appears, at least, one part of the Association, like the true whigs in the reign of Charles I. had no intention of carrying things to this unconstitutional extremity. They seem to have known, that, as the same causes would produce the same effects, the same ambitious views, the same erroneous opinions, and the same power, would produce the same calamities. And, as the object of the contest at the last election, seemed to be no less than the preservation of the constitution, a spirit was roused in the county suitable to the importance of the occasion.

the

the constitution. No provision of this kind, therefore, was made. But we may gather something of what was intended. The houses of parliament being then perfectly secured in the free and frequent use of their legislative and inquisitorial functions, it was declared, 'that it was the right of the subject to petition the king, and all commitments and prosecution for such petitioning were illegal.' And this, I suppose, was thought a sufficient security.

No precise boundaries, however, being settled, we learn, from great authority, 'that it is the want of knowing in whose hands the reins of government ought, in particular cases, to be intrusted, that has occasioned one half of those mischiefs which are apt to proceed from misguided political zeal (35).' And, in order to induce some abler pen to take up the subject, it may not be amiss to give the matter a little attention.

THE foundation of all our disputes seems to lie in the following reasoning. All go-

(35) BLACK, Com. introd. f. ii. p. 48.

vernments,

vernments, say certain politicians, were intended for the good of the people; and as the people are, therefore, the source of all power, and the house of commons are their representatives, by consequence, that assembly ought to be—I don't know whether, the sole *sovereign* power. But is not this striking at the foundation of the constitution? Is it then admitted, that monarchical power is useless? Or may we not, as reasonably, suppose, that one great man, superior to all private views, may be as likely to execute the laws faithfully, as a set of men actuated, perhaps, by no one motive whatever, but party-spirit (36), their own particular private views, or their own personal ambition? But even admitting the probability, that their intention might be as upright as their prince's, would it not be a dangerous system, to allow the government

(36) Mr. Fox, in his speech on the East-India bill, the 1st Dec. 1783, which has been published, frankly declares his sentiments on this head, in the words following: As to party-spirit, 'that I feel it, that I have been ever under its impulse, and that I ever shall, is what I proclaim to all the world.' But let me ask, has not the very same kind of spirit been the cause of the most of our political evils, ever since the fortunate days of Q. Elizabeth?

to be carried on by party ; by those who can form the most powerful connections, or what is called a *coalition* or *union* of parties ? Would not, instantly, the monarchy be overturned, the fundamentals of government be subverted, the constitution dissolved ? In the place of a free government, would not despotic power be established in party ; the most violent contentions succeed ; the public treasure be wasted in *corruption* and prodigality ; the force or strength of the society be divided, weakened, and destroyed by *faction* ; the accusers becoming the chusers, perhaps the party to be accused, all *responsibility* be lost ; the *public interest* neglected ; and the nation again experience all the *licentiousness* and misery of *anarchy* ? In short, has not this spirit of party, and the success in procuring various emoluments, with which it has been attended, been the chief cause of that corruption, that prodigality of the public treasure, that indecision, and want of strength and vigour in the public force, which all considerate men have, with so great reason, deplored ?

AND

AND when we reflect, that the king, in his executive capacity, does little more than appoint his ministers, who are amenable to parliament for their conduct ; that his share in the legislature is principally designed to protect his prerogative ; and is, therefore, confined to a simple negative, which has not been exercised for near a century ; is it not astonishing, that an alarm should be spread, of either inclination or ability in the Crown to annihilate the house of commons ? The prevailing party at the Revolution, by declaring the suspending or dispensing with *laws*, the levying of *taxes*, and the raising an *army* by regal authority, without consent of parliament, to be illegal ; and that debates in parliament ought not to be *impeached* or *questioned* in any court or place out of parliament ; took effectual care to protect the legislative assemblies, not only in the exercise of their legislative and inquisitorial rights, but in their freedom and independence. But what provision was made to secure the like freedom and independence in the executive power ?

FOR

FOR my own part, as long as I believe that ‘liberty is the direct end of the English constitution (37),’ I shall remain satisfied that every part of it ought to be free; the constitution as well as the subject; that if any man shall be ‘impeached or questioned’ for offering his advice or information to any one part of the legislature, the greatest men have erred, and it is not true, that this is ‘a free state, in which every subject, who is supposed a free agent, is his own governor (38);’ and that they mistake greatly, who suppose it to be ‘a proof of the soundness of the principles on which the English constitution is founded, that it has allotted to the people themselves the province of openly canvassing and arraigning the conduct of those who are invested with *any branch of public authority*; and have thus delivered into the hands of the people at large, the exercise of the censorial power (39).’ Surely,

(37) Sp. L. b. xi. c. 5. BLACK. Com. Introd. p. 6.

(38) Sp. L. b. xi. c. 6. BLACK. Com. b. i. c. 2. p. 158.

(39) MONTESQUIEU tells us, ‘That, as *the enjoyment of liberty, and even its support and preservation*, consists in every man’s being allowed to speak his thoughts, and to lay open his sentiments; a citizen, in this state, will say or write whatever the laws do not expressly forbid to be said or wrote.’ Sp. L. b. xix. c. 27.

it can be no free government under which we live, unless every constituent part of it, the king, as well as the lords and commons; the constituents as well as their representatives; in short, the whole *legislature*; which, governing every part of government, even the different branches of the legislature itself, is certainly the *supreme* power, and may well be called the *government* (40); the executive, which is *subordinate* to it; the judicial, which is a branch of the executive; with every other part of the executive: or, to express the whole in one word, the *constitution*, in every particular, supreme and subordinate, be *free*; that is, possessed of the *political* liberty of acting, each power within its own sphere, *freely* for the *good* of the people; and abridged only of that *natural* liberty, which, without some restraint in particular cases, would most probably be used by men in power, to the people's *prejudice*. A restraint which, to borrow the words of the archbishop of YORK, 'established law imposes for the good of the community (41).'

(40) See BLACK. Com. introd. f. ii. p. 48. quoted in p. 155.

(41) Sermon preached before the Society for propagating the Gospel in Foreign Parts, Feb. 21, 1777.

HOWEVER,

HOWEVER, as a different doctrine is now held, by men too who call themselves the *friends of the people*, let us shortly inquire into the reason of the royal negative, why the executive power ought to be kept separate from the legislative assemblies, and the danger which may arise to liberty, if ever those bodies, or either of them, should obtain an unconstitutional controul over, what I shall call the *royal* executive power ; by which I mean here, only the right of the king to chuse his own ministers, in contradistinction to that *ministerial* executive power, which is certainly subject to the inquisitorial jurisdiction of the house of commons.

WITH respect to the propriety of the royal negative, it may be considered, first, On the reason of the thing ; secondly, On the authority of the writings of the most celebrated politicians ; and, thirdly, On the benefits or disadvantages with which, in experience, we have found it attended.

Concerning the king's legislative power in giving the royal negative.

THE argument against the royal negative made use of once, if I mistake not, by one of

the king's own ministers (which, if I am right, ought to be attended to as a circumstance more extraordinary than ever happened before, in the worst of times, unless in those of Charles I. ; and as containing, therefore, a lamentable proof of the weakness of the present government) was, that this prerogative, as is observed before, was, at least, *useless*, if not *dangerous*. And the proof of its uselessness was represented to be, its not having been exercised for a great many years. *Non-user*, it seems, was equivalent to *mis-user*. Moderation and abuse in the exercise of power, was the same thing. I admit this prerogative *has* not been exercised for many years ; or, if it be liked better, that it *can* not be exercised ; yet what does this prove ? Not that the power *ought* not to be exercised, but that such is the power of the house of commons, it *can* not be exercised ; or else such is the weakness, or want of occasion (42) (and if want of occasion, it is hoped it will continue much longer), and consequently such is the wisdom of the Crown, that it *has* not been exercised ' since

(42) It is hoped, there are not many prerogatives now that want either abolishing or abridging.

‘ the beginning of this century (43).’ The argument itself then seems to prove only, that, if the exercise of the prerogative has ever been necessary of late years, and relinquished, the strength of the monarch is impaired to a degree exceeding all former examples ; that a revolution in the constitution has taken place insensibly since the days of Q. Elizabeth, the characteristic of whose reign was *reverence of authority* (44).

If the sovereign power resides (45), and it certainly does reside, in the three branches of the legislature, the king, lords, and commons, and his majesty’s small remaining power of a negative shall be denied him, surely he will no longer have any *sovereign* power, but be reduced to the condition only of a *subject*. Whilst the head of the sovereign power, some respect may be paid to his authority ; but should he be deprived of his share in the legis-

(43) The last bill which was rejected, was that for triennial parliaments, by king William III. *anno* 1692. DE LOLME, *Const. Eng.* b. ii. c. 17. p. 405. 4th edit.

(44) HURD’s *Mor. and Pol. Dial.* p. 140.

(45) CLAR. *Hist. Rebel.* vol. i. p. 491.

lature (the real sovereign power), and himself be commanded, and the propriety of his measures constantly called in question, reproached, ridiculed, and thwarted, what reverence can be expected to be paid to his authority? Will the people any longer consider themselves as his subjects, and pay him that allegiance which is the price of protection, if he be unable to afford them protection?

Is there any danger, then, in the royal negative? Can it infringe any law, any liberty of the people? It is, as I conceive, no more than a declaration, that no innovation or new regulation shall be made at the time it is used. And, can any caution be too great in doing that which, once done, 'no authority upon earth,' without the same several powers should again happen to concur, and unite together for the purpose, 'can undo (46)?' The injury from passing an act being permanent, may be dreadful. The loss from postponing it, cannot be very considerable; being, in reality, 'no more than the temporary set-

(46) BLACK, Com. b. i. c. 2. p. 161.

' ting aside of some more or less useful speculation (47).'

BUT it is time to hear better authority than mine. Mr. YORKE, in his *Considerations on the Law of Forfeiture for High Treason*, says, that to take away the royal negative, would ' tend to the dissolution of the constitution ' of the government (48).' MONTESQUIEU tells us, that ' the executive power ought to ' have a share in the legislature by the power ' of rejecting, otherwise it would soon be ' stripped of its prerogative. Had it not a ' right,' says he, ' of putting a stop to the ' incroachments of the legislative body, the ' latter would soon become *despotic*; for, as it ' might arrogate to itself what authority it ' pleased, it would soon destroy all other ' powers (49).' And Sir WILLIAM BLACKSTONE affirms, that ' it is highly necessary

(47) DE LOLME, Const. Eng. b. ii. c. 3. p. 221. 4th edit.

(48) P. 117. The kings, in the heroic times of Greece, having no negative voice in the legislature, was one of the great causes of their being all expelled and banished. See Note (4), b. iii. c. 4. p. 176.

(49) Sp. L. b. xi. c. 6.

‘ for preserving the balance of the constitution, that the executive power should be a branch, though not the whole, of the legislature. *The total union of them,*’ says he, *would be productive of tyranny*; the total disjunction of them for the present would, in the end, produce the same effects, by causing that union, against which it seems to provide. The legislature would soon become tyrannical, by making continual encroachments, and gradually assuming to itself the rights of the executive power. Thus, the long parliament of Charles I., while it acted in a constitutional manner, with the royal concurrence, redressed many heavy grievances, and established many salutary laws. But, *when the two houses assumed the power of legislation, in exclusion of the royal authority, they soon after assumed likewise the reins of administration*; and, in consequence of these united powers, overturned both church and state, and established a worse oppression than any they pretended to remedy. To hinder, therefore, any such encroachments, the king is himself a part of the parliament: and, as this is the reason
‘ of

‘ of his being so, very properly, therefore,
 ‘ the share of legislation, which the Consti-
 ‘ tution has placed in the Crown, consists in
 ‘ the power of *rejecting*, rather than *resolving*;
 ‘ this being sufficient to answer the end pro-
 ‘ posed. For we may apply to the royal ne-
 ‘ gative, in this instance, what Cicero ob-
 ‘ serves of the negative of the Roman tri-
 ‘ bunes, that the Crown has not any power
 ‘ of *doing* wrong, but merely of *preventing*
 ‘ wrong from being done (50).’

BUT, perhaps, it will be contended, that, though it is the king’s undoubted prerogative to give his negative to any acts of parliament, yet that he ought to *follow advice* in giving it. But, whose advice is he to follow? If it be answered, His parliament; it is as much as to say, he ought to have no negative: for, how can those advise him otherwise than to pass a bill, which they have already passed themselves? If it be said, he ought to consult his ministers, and they should be looked upon

(50) BLACK. Com. b. i. c. 2. p. 154. Sulla—tribunis plebis sua lege injuriæ faciendæ potestatem ademit, auxilii ferendi reliquit. De LL. 3. 9.

as *responsible* for their advice to their sovereign, in his legislative, as well as his executive character, what minister would dare to advise a measure assented to by a body, one part of which can accuse, and the other condemn him for such advice (51)? It is plain, therefore, that, as the two houses of parliament are intitled, by the bill of rights, to 'freedom of speech,' and that their proceedings in parliament shall not be 'impeached or 'questioned,' so the monarch should have the like freedom, and, in like manner, *his* 'pro-

(51) Lord CLARENDON seems to think, it is not only lawful, but a duty, to dissuade the king from consenting to that which may be prejudicial to the Crown; at least, to make that prejudice manifest to him; though, as a private person, it were wished for the matter to be consented to. See his Hist. Rebel. b. iii. p. 157.

Sir WILLIAM BLACKSTONE, I think, says, that, 'in our law-books it is laid down, that peers are created for two reasons, *viz. ad consulendum, & ad defendendum regem*, to advise the king, and to defend him;' and that that is 'the reason why the law gives them freedom from arrests, even when no parliament is sitting; the law intending, that they are always assisting the king with their counsel for the commonwealth.'

And do not the terms, *le roi s'advise*, in which the king expresses the royal negative, imply a right, if he thinks fit, to be further advised?

'ceedings

'ceedings in *parliament* ought not to be impeached or questioned.'

The Author lately quoted (52), will tell us, that 'if the two houses of parliament, or either of them, had avowedly a right to animadvert on the king, or each other, or if the king had a right to animadvert on either of the houses, that branch of the legislature, so subject to animadversion, would instantly cease to be a part of the supreme power; the balance of the constitution would be overturned; and that branch or branches, in which this jurisdiction resided, would be completely sovereign.'

AND if it should so happen, 'that the independence of any one of the three branches of the legislature should be lost, or should become subservient to the views of either of the other two, there would soon be an end of the constitution. The legislature would be changed from that which was originally set up by the general consent and funda-

(52) BLACK. Com. b. i. c. 7. p. 244.

' mental

‘ mental act of the society ; and such a
 ‘ change, however effected, is, according to
 ‘ Mr. LOCKE,’ (who, perhaps, carries his
 theory too far), ‘ at once, an entire dissolu-
 ‘ tion of the bands of government, and the
 ‘ people would be reduced to a state of anar-
 ‘ chy, with liberty to constitute to themselves
 ‘ a new legislative power (53).’

NEITHER the powerful writings nor arguments of politicians, are, however, so convincing as experience. We are, therefore, naturally led to enquire, how the royal negative has been exercised in the most happy, as well as the most unfortunate periods of our history. Q. Elizabeth, of glorious memory, rejected bills, ‘ not in single and extraordinary
 ‘ cases, but in matters of ordinary course, and
 ‘ by dozens (54);’ and yet, notwithstanding the factions arising from the reformation of religion, ‘ trade,’ as we have before observed,
 ‘ flourished, riches increased, the laws were
 ‘ duly administered, the nation was respect-

(53) BLACK. Com. introd. f. 2. p. 51.

(54) HURD's Mor. and Polit. Dial. p. 166.

‘ ed abroad, the people were happy at home;’
 no complaint was made of the want of a
 ‘ permanent, efficient administration,’ and
 prodigality of the public treasure (55) was a
 crime unheard of. But when the lawful royal
 prerogative of dissolving the parliament (56),
 and negating those acts which might affect
 the king’s authority, was wrested from Charles I.
 the nation was plunged into an abyss of misery.
 The house of commons soon assumed the whole
 legislative authority (57), and passed a vote,
 ‘ that whatever was enacted or declared for
 ‘ law by the commons in parliament assem-
 ‘ bled, had the force of law; and all the
 ‘ people of this nation were concluded thereby,
 ‘ although the consent and concurrence of the
 ‘ king, or house of peers, were not had thereto.’

(55) All the expences of government in Elizabeth’s
 reign, amounted only to 18,000*l.* a year (BURGH’s Pol.
 Disq. vol. ii. p. 102.). But, lately, Mr. SOUTHWELL, in
 his speech on a motion for a deduction from salaries during
 the continuance of the war, said, ‘ I may suppose, that
 ‘ our salaries and pensions above 50*l.* a year, amount to,
 ‘ at least, a million sterling; if I said two, I believe I
 ‘ should not be mistaken.’ BURGH’s Pol. Disq. vol. ii.
 p. 99. 128.

(56) See NOTE [FFF].

(57) Jan. 4, 1648.

The constitution was entirely dissolved (58). But Charles II. being restored to the monarchy, the constitution was restored also; and a statute (the 13th Charles II. c. 1.) enacted, ‘ that if any person should maliciously
 ‘ or advisedly affirm, that both or either of
 ‘ the houses of parliament had any legisla-
 ‘ tive authority without the king, such per-
 ‘ son should incur all the penalties of a præ-
 ‘ munire (59).’

Concerning
 the king's
executive
 power in ap-
 pointing
 ministers,

THE next thing to be enquired into is, Whether the executive power ought be kept separate from the legislative assemblies. This is a matter so extremely obvious to every one, that little, I imagine, need be said about it. Mr. DE LOLME, speaking of the troubles in the time of Charles I. and the protectorship, says, ‘ that an attempt to establish liber-
 ‘ ty in a great nation, by making the people
 ‘ interfere in the common business of govern-

(58) It was said truly by Mr. PYM, that ‘ If the prerogative of the king overwhelm the liberty of the people, it
 ‘ will be turned to tyranny; *if liberty undermine the prerogative, it would grow into anarchy, and so into confusion.*’ Lord CLAR. Hist. Rebel. b. v. p. 403. fol. edit.

(59) BLACK. Com. b. i. c. 2. p. 160.

‘ ment,

‘ment, is of all attempts the most chimerical (60).’ And, MONTESQUIEU, who, Sir WILLIAM BLACKSTONE (61) tells us, generally thought and wrote in the spirit of genuine freedom, declares, that ‘there was one great fault in most of the ancient republics; that the *people* had a right to active resolutions, such as require some execution, a thing of which they are absolutely incapable. They ought to have no hand in the government, but for the choosing of representatives, which is within their reach. For, though few can tell the exact degree of men’s capacities, yet there are none but are capable of knowing, in general, whether the person they chuse is better qualified than most of his neighbours.’

NEITHER ought ‘the *representative body* to be chosen for active resolutions, for which it is not so fit; but for the enacting of laws, or to see whether the laws already enacted be duly executed, a thing they are very ca-

(60) Const. Eng. p. 53.

(61) Com. b. i. c. i. p. 145.

‘ pable of, and which none, indeed, but them-
 ‘ selves can properly perform.

‘ SHOULD the legislative power usurp a
 ‘ share of the executive, the latter would be
 ‘ undone.

‘ THE executive power ought to be in the
 ‘ hands of a monarch ; because this branch
 ‘ of government, which has always need of
 ‘ expedition, is better administered by one
 ‘ than by many : whereas, whatever depends
 ‘ on the legislative power, is oftentimes better
 ‘ regulated by many than by a single per-
 ‘ son (62).’

(62) DE LOLME says, ‘ it is absolutely necessary, for
 ‘ securing the constitution of a State, to restrain the exe-
 ‘ cutive power ; but it is *still more necessary to restrain the*
 ‘ *legislative* ;’ and adds, ‘ the former may be confined,
 ‘ and even is the more easily so, when undivided ; the le-
 ‘ gislative, on the contrary, in order to its being restrained,
 ‘ should absolutely be divided.

‘ In a word,’ says he, ‘ the result of a division of the
 ‘ executive power, is either a more or less speedy establish-
 ‘ ment of the *right of the strongest*, or a continued state
 ‘ of war : that of a division of the legislative power, is
 ‘ either truth or general tranquillity.’ DE LOLME,
 Conf. Eng. b. ii. c. 3. p. 219 222. 4th edit.

‘ BUT,

‘ BUT, if there was no monarch, and the
 ‘ executive power was committed to a certain
 ‘ number of persons selected from the legisla-
 ‘ tive body, there would be an end then of
 ‘ liberty ; by reason the two powers would be
 ‘ united, as the same persons would actually
 ‘ sometimes have, and would, moreover, be
 ‘ always able to have, a share in both.

‘ NOR would it be proper that the legisla-
 ‘ tive power should have a right to *stop* the
 ‘ executive. For, as the execution has its
 ‘ natural limits, it is useless to confine it ;
 ‘ besides, the executive power is generally
 ‘ employed in momentary operations. The
 ‘ power, therefore, of the Roman tribunes
 ‘ was faulty, as it put a stop not only to the
 ‘ legislation, but likewise to the execution it-
 ‘ self, which was attended with infinite mis-
 ‘ chiefs.

‘ BUT, if the legislative power in a free
 ‘ government ought to have no right to stop
 ‘ the executive, it has a right, and ought to
 ‘ have the means of examining in what man-
 ‘ ner its *laws* have been executed ; an ad-

‘vantage which this government has over
 ‘that of Crete and Sparta, where the Cosmi
 ‘and the Ephori gave no account of their
 ‘administration (63).’

ACCORDINGLY, all those acts of the executive power, which do not belong *personally* to the king, but are executed *ministerially* by others, are subjected to the animadversion of the house of commons.

The king himself to be free in those things which are his own *personal* acts.

BUT in those things which are the peculiar acts of royalty itself, I apprehend the king is as free, independent, absolute, and uncontrollable, as any other branch of the constitution.

A DIFFERENT doctrine, indeed, formerly prevailed, and the greatest miseries ensued, But, at the Restoration, a law was made to declare, ‘that, by the undoubted and *fundamental* laws of this kingdom, neither the
 ‘peers of this realm, nor the commons, nor
 ‘both together in parliament, or out of parliament, nor the people collectively, or re-

(63) Sp. L. b. xi. c. 6.

‘presentatively,

‘ presentatively, nor any other persons whatsoever, ever had, have, hath or ought to have, any *coercive* power over the persons of the kings of this realm (64).’

IN giving the royal negative in his *legislative* capacity, the king ought to be as free, independent, and absolute as either house of parliament. In his *executive* character he ought to be as free, independent, and absolute, in appointing his ministers, as the legislative assemblies are in accusing and convicting them (65). From the nature of the thing, the king only can have the appointment. It would be absurd for the appointment to be lodged in either of those bodies, one of which, in case of mal-conduct, must, as I have said

(64) 12 Charles II. c. 30. See also BLACK. Com. b. i. c. 7. p. 242.

(65) The king's absolute power of appointing the ministers of justice, or judges, though questioned by the parliament in the time of Charles I. I suppose is not now doubted. But I would observe, that the act of settlement (12 & 13 William III. c. 2.) directed that ‘ the judges commissions should be made *quandiu se bene gesserint*, and their salaries ascertained and established; but, upon the address of *both* houses of parliament, it might be lawful to remove them.’

above, accuse, and the other condemn. And as the accusers and judges for their conduct are, so the person who appoints seems to be for his, accountable to no tribunal but God and his own conscience.

‘ FOR whatever may be the issue of any examination into the executive authority, the legislative body ought not to have a power of judging the person, nor of course the *conduct* of him who is intrusted with the executive power. His person should be sacred, because, as it is necessary for the good of the State to prevent the legislative body from rendering themselves *arbitrary*, the moment he is accused or tried there is an end of liberty (66).’

‘ IN this case the State will be no longer a monarchy, but a kind of republican, though not a free government.’

(66) This is so true, that it is an acknowledged maxim of the English government, that ‘ the king (himself) can do no wrong.’

BUT

‘ BUT as the person intrusted with the executive power (67) cannot abuse it without bad counsellors, and such as hate the laws as ministers, though the laws favour them as subjects; these men may be examined and punished. An advantage which this government has over that of *Gnibus*, where the law allowed of no such thing as calling the *Amymones* to an account even after their administration; and therefore the people could never obtain any satisfaction for the injuries done them (68).’

FROM the spirit therefore of the English constitution I am satisfied, that none but those I have distinguished by the appellation of the *ministerial* executive power, can be liable to be impeached or questioned for their conduct, in any other manner than as settled by the bill of rights,

(67) It is to be observed here, that MONTESQUIEU in this place speaks only of the counsellors of the king in his *executive*, and not in his *legislative* character. And Sir WILLIAM BLACKSTONE, I observe, uses the very same caution, in his Com. b. i. c. 2. p. 155. though in the very page where this is mentioned, he makes a clear distinction betwixt the king’s *legislative*, and the king’s *executive* power.

(68) Sp. L. b. xi. c. 6.

' by petition to the king (69).' A valuable franchise of the subject, which, when exerted on proper occasions, has generally, in the end, been found sufficient to prevail.

SEVERAL persons however I know hold a different opinion, and entertain much more lofty ideas of the power of the house of commons. But such persons would do well to consider, whether one branch of the government ought not to be as free and independent as another; and whether if the legislative bodies, or either of them, instead of *inquiring* into the conduct of the executive power, should assume the office of directing its operations, there would not be an end of all responsibility, one or both of the legislative assemblies would not become despotic, and the constitution be destroyed.

(69) The Stat. of 13 Charles II. c. 5. to prevent the mischiefs attending tumultuary petitions, which had been made use of, as the preamble expresses, 'to serve the ends of factious and seditious persons, and had been a great means of the late unhappy wars, confusions and calamities,' enacts, that no petition to the king, or either house of parliament, shall be presented by more than *ten* persons at a time.

WHAT

WHAT can be more plain and simple, than that the *supreme* executive magistrate shall appoint his own *subordinate* ministers; and, in order effectually to secure their fidelity to the public, that their conduct shall be subjected to impeachment in parliament? On the other hand, should surmises, jealousies, and apprehensions be thought sufficient to justify, upon all occasions, an *arbitrary* interference with the executive power; should the house of commons, ‘without any specific objection (70),’ be in the frequent use of complaining against ministers, or of a want of confidence in ministers; and deem a bare *want of confidence*, without signifying ‘any specific reason for their opinion (71),’ a sufficient argument for their dismissal, would not such interposition begin (to use the words of king James I. (72), ‘to shake the king’s authority in the choice of his ministers (73)?’

The obvious use of restraining the *lust of POWER* and inspiring a *love of LIBERTY*.

(70) The words of the King’s Answer to the Address of the House of Commons.

(71) The words of a late Address of the House of Commons to his Majesty. See NOTE [GGG].

(72) CLAR. Hist. Rebel. vol. i. p. 19.

(73) See NOTE [HHH].

Grounding their proceedings on *suspicion*, instead of *proof*, might they not come to 'stop the executive power?' Instead of being retrospective, should their power become chiefly prospective; instead of using their inquisitorial power in impeaching, or in order to impeachment, should a pretended *want of confidence* only, be held sufficient to stop either the *royal* executive, or the *ministerial* executive power, would not the *inquisitorial* power of the house of commons, immediately become *dictatorial*; the house of commons become the real ('efficient') executive power; be placed in the ridiculous situation of chusers and accusers, and perhaps the party accused; the very responsibility pretended to be supported, be annihilated; and that corrupt influence, to whose growth such aversion is affected, be in reality augmented?

WHILST the executive power remains where it is constitutionally placed, there can be no real cause for those dreadful apprehensions which some men pretend to entertain of it. What minister would now dare to exercise an arbitrary power over any man's person or property;

perty; or do any one act intentionally to injure the interests of his country? Should any one be hardy enough to do so, would he not be sure to meet with the deserts due to his temerity? But should the executive power by any means devolve upon the house of commons, would the prevailing party there have any of those scruples, or be likely to meet with any such chastisement? Indeed, on whom could be fixed either the odium or the punishment? Would not they endeavour to shelter themselves under the law? Instead of maintaining general *liberty*, would not the acts of the legislature be calculated rather to support their own *power*, and no remedy be left to the great body of the people, but that which is shocking to humanity?

‘ POWER being become the only kind of
 ‘ security of which men could now shew
 ‘ themselves ambitious, the *babeas corpus* act,
 ‘ and in general all those laws which sub-
 ‘ jects of every rank mention with love, and
 ‘ to which they look up for protection
 ‘ and safety, would be spoken of with con-
 ‘ tempt, and mentioned as remedies only fit
 ‘ for

‘ for countrymen and cities : it even would not
 ‘ be long before they were set aside, as ob-
 ‘ structing the wise and salutary steps of the
 ‘ senate.

‘ THE pretension of an equality of right in
 ‘ all subjects, of whatever rank and order,
 ‘ to their *property and to personal safety*,
 ‘ would soon be looked upon as an old-
 ‘ fashioned doctrine, which the judge himself
 ‘ would ridicule from the bench. And the
 ‘ *liberty of the press* (74), now so universally
 ‘ and warmly vindicated, would, without loss
 ‘ of time, be cried down and suppressed, as
 ‘ only serving to keep up the insolence and
 ‘ pride of a refractory people.

‘ PRESENT, or expected, *personal power*
 ‘ and independence on the laws, being now
 ‘ the consequence of the trust of the people,
 ‘ wherever they should apply for servants,
 ‘ they would only meet with betrayers. Cor-
 ‘ rupting, as it were, every thing they should
 ‘ touch, they could confer no favour upon an
 ‘ individual, but to destroy his public virtue ;

(74) See NOTE [III].

‘ and

‘ and any advancement of a man by them
 ‘ would only be immediately to inspire him
 ‘ with views directly opposite to their own,
 ‘ and to send him to increase the number of
 ‘ their enemies (75).

‘ MADE wise by the examples of several
 ‘ other nations (76), by those which the
 ‘ history of this very country affords, let the
 ‘ people therefore, in the heat of their strug-
 ‘ gles in the defence of liberty, always
 ‘ take heed, only to reach, never to over-
 ‘ shoot, the mark—only to repress, never to
 ‘ *transfer and diffuse* power (77).’

THUS, if we would have the monarchy
 pure, as well as the democracy, prevent
 another oversight renewing those troubles
 which happened in the reign of Charles I. and
 preserve our liberty, we recur to what that
 king recommended to the parliament; to have
 some means devised ‘ for upholding and main-

(75) DR LOLME, *Const. Eng.* b. ii. c. 19. p. 509, 4th
 edit.

(76) Sweden and Poland particularly.

(77) DR LOLME, *Const. Eng.* b. ii. c. 19. p. 511. 4th
 edit.

‘ taining.

‘ taining his majesty’s just royal prerogatives, the settling his revenue, and ascertaining the real privileges of parliament (78).’

THIS is forcibly expressed by the celebrated writer lately quoted (79). ‘ The less informed part of the people,’ says he, ‘ may look, if they chuse, upon the crown as the seat of the evils they are exposed to ; but the more enlightened part of the nation ought to remember, that the constitution can only subsist by virtue of a proper equilibrium—BY A LINE BEING DRAWN BETWEEN POWER AND LIBERTY.’

C H A P. XII.

Conclusion drawn from the Eleven preceding Chapters.

AFTER what has been said in the eleven preceding Chapters, I think we may safely conclude, that no improvement of the government will be effectual, which does not take for its basis, the establishing of its real nature and principles ; that any will, independent of that of the people, is utterly

(78) CLAR. Hist. Rebel. vol. i. p. 309. 369. 433.

(79) DE LOLME, Const. Eng. b. ii. c. 19. p. 511. 4th edit.

repugnant to the *nature* of democracy; and that *virtue* in the house of commons, and *power* in the Crown, are indispensable *principles*: that faction and corruption are of most dangerous tendency; that by means of corruption, it is possible the executive power may draw to itself the whole legislative authority; by means of faction, it is perhaps as probable, that the legislative assemblies, or one of them, may become the executive power; that if the legislative and executive powers were once more united, we should again experience all the anarchy, confusion, and calamity, which formerly attended their junction: but that these evils may be prevented, by destroying private views; by abolishing the boroughs, and causing members to be returned by suitable districts; by shortening the duration of parliaments; in short, by making elections free and frequent; and lastly, by drawing a line between liberty and power, not to be transgressed by any branch of the government, either legislative or executive.

WERE these methods to be taken, there would be no longer any complaint of *expence*
at

at elections, or any *heat or animosity* either among the electors or the elected. A seat in parliament would be again looked upon, like the office of sheriff, as a burthen rather than a benefit. A member of parliament would be chosen with as little heat, animosity, or expence, as the mayor of a corporation. Parliamentary interest, and an opposition to the measures of the crown, conferring no title to honour or preferment, the talents of popular intrigue and eloquence would be again but little cultivated. Faction ceasing, corruption would cease. Virtue, as far as the frailties of human nature will admit, would be restored to the democratic assembly; the monarch would obtain strength; the subject would enjoy a large portion of freedom and happiness; and the nation would soon procure allies, and become as renowned and glorious as at any former period.

LET us then consider how far the several statutes, enacted by the legislature, have been calculated to answer these good purposes.

B O O K IV.

Of the Views of the Legislature at different Times, to remedy the Grievances complained of.

C H A P. I.

The Subject treated of in this Book.

ALL the schemes of the Legislature at different times to remedy the grievances complained of, may I think be comprised under,

The several statutes that have been passed on this subject.

1. The bill of rights (1).
2. The statute for restraining persons holding offices in the customs, excise, &c. from *voting* (2) at elections.

————— for restraining persons holding offices in the customs, &c. from *soliciting votes*, or indeed at all *intermeddling* (3) at elections.

(1) 1 William & Mary, sess. ii. c. 2.

(2) 22 George III. c. 41. The penalty of voting is 100*l*.

(3) 12 & 13 William III. c. 10. s. 91. 10 Ann. c. 19. s. 182. The penalty of soliciting votes, &c. is 100*l*.

The statute for preventing a *greater number* of commissioners from being appointed for executing any office than usual (4).

——— for vacating the seat of any member accepting any *office of profit* from the crown; yet suffering him to be re-elected (5).

——— for preventing any person holding a *place* (6) in the customs, excise, &c. or having a *pension* (7) during pleasure, or for any (8) term of years, from being elected, or sitting, voting, or acting as a member.

——— for excluding (9) persons concerned in certain *contracts* made for the public service, from the house of commons.

(4) 6 Ann. c. 7. f. 27.

(5) 6 Ann. c. 7. f. 28.

(6) 5 William & Mary, c. 7. f. 57. 11 & 12 Will. III. c. 2. f. 150, 151. 12 & 13 William III. c. 10. f. 89, 90. 6 Ann. c. 7. f. 25, 28, 29, 30, 31. 15 George II. c. 22. f. 1, 2, 3.

(7) 6 Ann. c. 7. f. 25.

(8) 1 George I. c. 56. The penalty is 20*l.* for every day on which the member, who is declared to be incapable of sitting or voting, shall so sit or vote.

(9) 22 George III. c. 45.

The statute for suppressing certain (10) *parliamentary offices* payable out of the revenues of the civil list.

WHICH several statutes seem to be intended to remove *undue influence in the CROWN*.

3. The statutes (11) requiring in certain electors, as a qualification for voting, a freehold estate of 40s. annual value.

4.—for excluding copyholders from a right of voting (12).

5.—against bribery in electors (13).

WHICH last mentioned statutes seem to be designed to remove all *undue influence on the CONSTITUENT body of the people*.

(10) 22 George III. c. 82.

(11) 8 Henry VI. c. 7. 20 George III. c. 17.

(12) 31 George II. c. 14.

(13) 2 George II. c. 24. s. 7.

C H A P. II.

Of the Bill of Rights (1).

The occasion
of the bill.

EVERY one knows that the bill or declaration of Rights was made upon the spur of the occasion, when the nation justly apprehended (what there seems to be no cause at all to fear at present) that the *executive* power meant to assume to itself the *legislative*, and in criminal prosecutions the *judicial*; and consequently to become *despotic*: and withal to establish a religion, generally thought to be favourable to this policy.

Provision for
religious liberty.

TEREFORE, for the preservation of *religious liberty*, after reciting that the late king James II. 'had endeavoured to subvert and
' extirpate the *protestant religion*,'

' By committing and prosecuting divers
' worthy prelates; and

' By issuing and causing to be executed a
' commission under the great seal for erecting

(1) 1 William & Mary, sess. 2. c. 2.

I

' a court

‘ a court called, *the court of commissioners for ecclesiastical causes.*’

THAT he had ‘ abdicated the government ;
‘ that the throne was thereby vacant ; that a
‘ full and free representative of the nation had
‘ been assembled ;’ the bill or act declared,

‘ THAT the commission for erecting the
‘ late court of commissioners for *ecclesiastical*
‘ *causes*, and all other commissions and courts
‘ of like nature, were illegal and pernicious ;’
and ‘ that every person that should profess the
‘ Popish religion, or should marry a papist,
‘ should be excluded, and be for ever incapable
‘ to inherit, possess, or enjoy the crown of this
realm.’ (Which is further confirmed by the act
of settlement (2), which requires, ‘ that whoso-
‘ ever shall hereafter come to the possession of
‘ this crown, shall join in communion with
‘ the church of England as by law esta-
‘ blished.’)

To preserve the freedom and independency
of the *legislative* assemblies (the peculiar, and
perhaps *principal*, not to say *supreme* guardian
of the liberties of the subject), and prevent the

The liberty
of the *legisla-*
tive assem-
blies.

(2) 12 & 13 William III. c. 2. s. 3.

whole legislative power from being assumed by the executive, after reciting that the king
 ‘ had endeavoured to subvert and extirpate the
 ‘ the laws and liberties of the kingdom ;

‘ By assuming and exercising a power of
 ‘ dispensing with and suspending of *laws*, and
 ‘ the execution of laws, without *consent of*
 ‘ *parliament* ;

‘ By *levying money* for and to the use of the
 ‘ Crown, by pretence of *prerogative*, for other
 ‘ time and in other manner, than the same
 ‘ had been granted by *parliament* ;

‘ By raising and keeping a standing *army*
 ‘ within the kingdom in time of peace, *with-*
 ‘ *out consent of parliament*, and quartering
 ‘ soldiers contrary to law ; and

‘ By causing several good subjects, being
 ‘ protestants, to be disarmed, at the same time
 ‘ when papists had been both armed and em-
 ‘ ployed contrary to law.’

THE bill of rights ‘ declared, That the pre-
 ‘ tended power of *suspending of laws*, or the
 ‘ execution of laws, by *regal authority*, and
 ‘ *without*

‘ *without consent of parliament*, was illegal ;
 ‘ that the pretended power of *dispensing with*
 ‘ *laws*, or the execution of laws, by *regal*
 ‘ authority, as it had been assumed and ex-
 ‘ ercised of late, was illegal.

‘ THAT *levying money* for or to the use of
 ‘ the Crown, by pretence of *prerogative*,
 ‘ *without grant of parliament*, for longer time,
 ‘ or in other manner than the same was or
 ‘ should be granted, was illegal.

‘ THAT the *raising* or *keeping* a *standing*
 ‘ *army* within the kingdom in time of peace,
 ‘ unless it were *with consent of parliament*,
 ‘ was illegal.’ On the contrary,

‘ THAT the subjects which were protest-
 ‘ ants, might have arms for their defence
 ‘ suitable to their conditions, and as allowed
 ‘ by law ; and,

‘ THAT the *freedom of speech*, and debates
 ‘ or proceedings in parliament ought not to
 ‘ be *impeached*, or *questioned in any court or*
 ‘ *place out of parliament*.’

Of the judicial power.

To preserve freedom, independency, impartiality, and integrity, in *judicial* proceedings (the *subordinate* guardian of the liberties of the subject), and prevent the *judicial* power from being assumed by the *executive*, after reciting, that the king ‘ had endeavoured,’ as before mentioned, ‘ to subvert and extirpate the laws and liberties of the kingdom :

‘ THAT, of late years, partial, corrupt, and unqualified persons had been returned and served on juries in trials ; and, particularly, divers jurors in trials for high treason, which were not freeholders :

‘ THAT excessive bail had been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects (3) :

‘ THAT excessive fines had been imposed ; and illegal and cruel punishments inflicted :

‘ AND several grants and promises made of fines and forfeitures, before any conviction

(3) The *habeas corpus* act.

‘ tion

‘ tion or judgment against the persons, upon
‘ whom the same were to be levied.’

THE bill ‘ declared, That excessive bail
‘ ought not to be required, nor excessive fines
‘ imposed ; nor cruel and unusual punish-
‘ ments inflicted.

‘ THAT jurors ought to be duly impan-
‘ nelled, and returned ; and jurors which
‘ passed upon men in trials for high-treason,
‘ ought to be freeholders.’ And,

‘ THAT all grants and promises of fines
‘ and forfeitures of particular persons before
‘ conviction, were illegal and void.’

THUS were the two great powers of go-
vernment, the *legislative* and the *judicial*,
made free and independent, and secured
from any *assumption by the executive* ; a mea-
sure well calculated to guard the *liberty of the*
subject. Of the
executive
power.

BUT what was done to guard or maintain
the *power of the State* ?

IT is true, the *executive power* was left undiminished, excepting in those articles which, as we have before observed, interfered with the other powers of government; the bill of rights only declaring,

‘ THAT it was the right of the subjects
 ‘ to petition the king, and all commitments
 ‘ and prosecutions for such petitioning were
 ‘ illegal.’

Virtue, the principle of the representative assembly, overlooked.

BUT what was done to maintain the nature and principles of the government, the life and soul of the constitution; the true *nature* of the democratical branch of the government, and the internal *principle* which directs its operations? what was done to improve the *virtue* of the representatives of the people; to make the executive power as free and independent as the legislative, and as secure from any assumption of power by the legislative, by much the most dangerous evil of the two? On a superficial consideration, when one reads in the bill of rights, that *elections ought to be free, and parliaments held frequently*, one would imagine it had been intended to improve the *virtue* of the *popular*

pular representation; but, unfortunately, the legislature, at that time, were so intent upon limiting the *power* of the *Crown*, that it took up their whole attention; and any improvement in the *virtue* of the *representative* assembly was never thought of, any further than as it might be influenced by the executive power. Therefore, when the bill of rights declared,

‘ THAT election of members of parliaments ought to be free,’ it was never intended to free the elections from the influence of private persons, but merely from the influence of the Crown; the reason assigned being, that the *king* had ‘ violated the freedom of election.’

AND where it is declared, that parliaments *ought to be held frequently*, I apprehend it was not intended by that expression, so much to improve the *virtue* of the representative body, as to be another check upon the power of the king. As there was, at that time, little, if any, funded national debt, the king might not be disposed

disposed to suffer parliaments to be held frequently. As a parliament had lately, in the reign of Charles II. sat near eighteen years, it might be necessary to declare, which indeed this statute did not, that *new* parliaments ought to be held frequently. But that there never was any intention to improve, by this provision, the *virtue of the representatives*, is manifest from the manner in which the clause is expressed: the words are to this effect, *viz.* ‘ That parliaments ought ‘ to be held frequently’ (not for preventing any undue influence on the house by its *permanency*, but) ‘ for redress of all grievances, ‘ and for the amending, strengthening, and ‘ preserving of the laws.’

THE bill of rights, then, did little to establish the true *nature* and *principles* of the *legislative* and *executive* branches of the government. It might effectually prevent the executive power from assuming the legislative, and, consequently, from assuming tyrannic sway; but did it take equal care to prevent the legislative from assuming the executive,

cutive, and of course the same kind of sway (4)?

DID it improve the *nature* of the government? Did the executive branch of government become as free as the other branches of the legislative? Did the force of the society become more united and firm, or more divided and loose? Did the house of commons become more truly the representatives of the people?

WERE the *principles* of the government improved? Did the strength of the kingdom, by a disunion and division of the executive power, become more *powerful*, or more enfeebled? Did the house of commons become more *virtuous*, or more venal? Is the national glory increased, or diminished? Have the national burden, and profusion in the expenditure of public money, since the Revolution, been lessened, or augmented? Have corruption and faction, since that time, decreased?

(4) See NOTE [KKK].

C H A P. III.

Of the Statutes for reducing the Influence of the Crown.

All undue influence ought to be abolished.

IF all undue influence be forbidden on the courts of *justice*, it seems to be still more necessary to be removed from the *grand representation of the kingdom*; a jurisdiction to which we must naturally look up for the preservation of our liberties, political, civil, and religious.

The influence of private persons, as well as the influence of the Crown.

DOUBTLESS every kind of influence on the representatives of the people is a matter of serious concern; and, by all means, ought to be avoided. But, surely, the influence of *private persons* is as dangerous as that of the *Crown*. The influence of the *Crown*, perhaps, changes with a change of ministry. Or, if not, the *commons*, having the *initiative* in legislation (1), can *propose* laws to abridge—

(1) This is a privilege of such extent, says DE LOINE, 'that it would suffice to put an assembly, formed of men of the greatest parts, at the mercy of a few dunces.' *Const. Eng.* p. 270.

or abolish it. And relief has seldom been refused when required.

BUT the influence of *private persons* remains ever the same; and the *Crown* can *propose* no law, either to abolish or abridge it. And, accordingly, no relief, in this respect, has ever been seriously attempted.

FORMERLY, the two powers having grown up together, they served as a counterpoise to each other. Violent contentions, indeed, subsisted between them; but should the influence of the Crown be taken away, and that of private persons be suffered to remain, will it not destroy the equilibrium of the constitution?

WE are told, that the reduction of the influence of the Crown, by the late acts of parliament, has been already 'sensibly felt:' but, *when no constitutional question shall rouse up the people*, what must we feel, when the full effects are made known, on some future call of parliament.

Reduction of the influence of the Crown already sensibly felt.

I FEAR, if the power of the Commons be increased, and that of the Crown diminished,

Danger of increasing the power of the Com-

in

mons, and
diminishing
that of the
Crown.

in the ratio lately proposed, power will only change hands ; and the mischief, instead of being removed, will be multiplied.

WE may exclaim, ‘ what more dangerous
‘ perversion of the constitution can be ima-
‘ gined, than the nomination of members of
‘ parliament by the Crown ; or what fidelity
‘ to the public trust can be expected from
‘ senators, who are created by that govern-
‘ ment whose conduct they ought to watch
‘ and controul (2) !’ But may it not with as
much reason be asked, what more dangerous
perversion of the constitution can be imagined,
than [a *permanent* body of men commanding
the executive power] ; or what fidelity to the
public trust can be expected from senators,
who are created [to watch and controul
themselves ?]

CAN we, with truth, say of these sta-
tutes any more than of the bill of rights, that
they have made the popular representation
more *virtuous*, or contributed to the *power*
of the Crown ? Can we say, that, since they

(2) Circ. Let. Yorksh. Assoc. dated Nov. 1, 1782.

have

have been passed, there has been a less tendency in the legislative, to assume the executive power? if not, let us bear in continual remembrance what is said by Mr. LOCKE (3), that if ‘ the same persons, who have the
 ‘ power of making laws, should have also in
 ‘ their hands the power to execute them, they
 ‘ might exempt themselves from obedience to
 ‘ the laws they make, and suit the law, both
 ‘ in its making and execution, to their own
 ‘ *private advantage*, and thereby come to
 ‘ have a DISTINCT INTEREST *from the rest*
 ‘ *of the community, contrary to the end of society*
 ‘ *and government.*’

C H A P. IV.

Of the Statute against Bribery, in the constituent Body of the People.

AS in the administration of justice, it is a great crime to bribe a judge (1), jurymen, or witness, so, without doubt, it ought to be considered as a crime, to bribe an elec-

Bribery of an elector ought to be prevented:

(3) On Civ. Gov. b. ii. c. 12. s. 1.

(1) ‘ The chief justice Thorpe was hanged for a corrupt administration of justice, in the reign of Edw. III.’ See 11 Hen. IV. BLACK. Com. b. iv. c. 10. p. 139.

But it is absurd to punish with severity a single elector for selling his vote, and suffer a whole borough to be sold with impunity.

tor of a representative of the people in parliament. But, does it not appear extremely strange, that severe laws should be made against corruption in the *constituent* body of the people, and yet that not one shall be found in the Statute-book, against the possible crime of corruption in the people's *representatives*? The law, perhaps, will not presume a thing so odious as corruption in the representative assembly, and, therefore, makes no provision against it; and the rather, perhaps, as a member may be impeached, or expelled for corruption. But, admitting this reasoning to prevail, can it be reasonable, that a poor elector, who, for corruption, is also liable to the censures of the house of commons, shall be subjected to an oath; and though, perhaps, only one in a vast multitude, that he shall be liable to incur a penalty of 500*l.* and be forever disabled from voting and holding an office in any corporation, should he happen to be found guilty of taking ever so small a 'sum of money, gift, office, employment, or reward;' and that for a like crime in the person elected, no oaths, no penalties shall be required;

required; no laws shall be made either to punish or prevent it? Is it not unaccountable, that both the corruptor and the corrupted are totally unnoticed in the Statute-book? That the *representative*, when he gets into parliament, may (for any thing that appears to the contrary in any written law) accept with impunity ten thousand times as much as would punish his *constituent* with perpetual imprisonment?

THIS law may contribute to give *virtue to the* CONSTITUENT *body of the people*; but I am afraid, without some effectual provision to secure the *virtue of the* REPRESENTATIVES themselves, this provision will be of little avail.

The representatives, as well as the constituents, ought to be free from corruption.

CHAP. V.

Of the Statute requiring a Qualification in County Electors.

WHEN we are considering the different schemes of the legislature, for redressing the grievances which have for ages been found to arise from a defect in the constitution of the house of commons, perhaps one of the principal heads of enquiry ought to be, *the statute requiring a qualification in county electors*;

B b

but

but as we have had occasion to discuss this subject in another place, and have there endeavoured to shew the reasons on which the statute is founded, I shall beg leave here only to refer the reader for information in this particular, to Book III. Chapter VII.

C H A P. VI.

Of the Statute excluding Copyholders from a Right of Voting.

In the present state of representation, would do no good;

AFTER the foregoing observations concerning the requiring of a qualification in electors, little, I apprehend, need be added, to shew the impropriety of increasing, under the present state of representation, the number of electors in counties. If, indeed, the *qualification* was increased, copyholders, at least those on whose admittance the fine is certain, might become intitled, as well as freeholders, to a right of election. But whilst matters remain as they are, what *good* end would it answer to grant them that privilege? Is not the great body of freeholders a *number* sufficient to chuse the members? Can the members do the business of the *freeholders*, and neglect that of
the

the *copyholders*? And would *better* members be chosen, would more equal laws be made, if copyholders were admitted to vote? Rome (1), after the social war, willing that persons bound by the same laws should enjoy the same privileges, admitted persons, not within the limits of the city (the burghers of Italy), into the rank of free citizens; but the consequence was fatal to the liberties of Rome. In our own country, we are wiser. In many places there are numbers who have no vote at all, and are yet perfectly satisfied. Within the county of Kingston upon Hull, comprehending seven villages, besides the town of Hull, the members are chosen only by the freemen of Hull; and a man may have a freehold estate of 1000*l.* a year in the county, and not have one vote for a member of parliament any where in the kingdom (2); yet no complaint is heard of the want of this privilege. The freeholders within the city of York, are under the same predicament; yet, though the emporium of new

(1) Sp. L. b. ii. c. 2. BLACK. Com. b. i. c. 2. p. 159. and Dr. PRICE's Observ. on Civ. Lib. p. 91.

(2) See NOTE [LLL].

doctrines, I do not learn but they are, in general, very well contented. The case is the same, I believe, within the city of Gloucester. And, perhaps, Newcastle upon Tyne, which is a county of itself, Berwick upon Tweed, and other places, may be circumstanced in like manner. But I think no complaints are made by any of them. They know that members are chosen for the same class of people in other places; and, having nothing peculiar in their situation, they are well assured their particular rights must be involved in those of the whole community; that nothing can be beneficial to the kingdom in general, and at the same time prejudicial to them.

—would do
harm.

IF, then, no *good* is to be derived from adding copyholders to the electors of members for counties, will no *harm* ensue from such a measure? Will not the alteration make the elections more expensive, more tumultuous, and unsafe than they are already? Instead of granting a greater number of suffrages, will it not, in effect, take away all manner of suffrage? Would there ever again be an *elec-
tion*

tion in a large county which contains many copyholders? instead of being elected, would not the members *always* be *nominated* by a few leading rulers; and so the representatives of counties become the representatives of private persons, instead of the representatives of the public; and, consequently, lead to all the mischiefs attending the private views of parties?

LET us rest satisfied, then, that so long as the electors in counties are suffered to be so numerous as they are at present, the statute of 31 George II. c. 14. settling the claim of voting at elections of members of parliament, made by persons holding estates by copy of court roll (3), is a wise law,

C H A P. VII.

Reflections on the aforementioned Statutes.

UPON the whole, have the statutes served to confirm two of the first principles of the constitution, namely *virtue* in the *democratic* department, and *strength* or *power* in the *monarchic*? The bill or declaration of

(3) See NOTE [MMM].

rights, and the statutes for reducing the influence of the Crown, may have put the *executive power* under proper limitations: the statutes against bribery, requiring a qualification in county electors, and excluding copyholders from a right of voting for county members, may, under the present system of the constitution, be proper regulations, as relating to the *constituent body* of the people; but surely much yet remains to be done, to improve the *virtue* of the *representative body*, and the *power* of the *Crown*.

IF, then, the *laws* hitherto have been ineffectual for these purposes, let us see whether the *proposals of individuals* have been more fortunate.

B O O K V.

Of the different Schemes of private individuals to remedy the Grievances complained of.

C H A P. I.

Of the Subject of this Book.

I THINK the schemes of private individuals may be comprehended in the following ;

The heads of the different schemes of individuals.

1. AN equal representation, or a representation proportioned to the number of the people.

2. FOR adding an hundred members to the counties and the metropolis.

3. FOR limiting the number of the peerage.

4. FOR chusing into the ministry neutral men, and men of capacity, impartiality, and disinterestedness.

5. AN equal representation, and annual parliaments.

OF which, each in their order.

CHAP. II.

Of an equal Representation, or a Representation proportioned to the Number of the People.

An equal representation under this construction of it, justified by no statute or usage.

HAVING already treated of *equality*, as relative to the *constituent* body of the people, or the right of universal suffrage, I am now to consider it in another point of view, as it relates to the people's *representatives*.

THERE is something, *surely*, fascinating in the term *equality*; for a representation according to the number of electors, is justified neither by any statute, nor by any usage in this kingdom. 'A plan of equal representation,' as a late writer justly observes, 'could never have been intended by our ancestors, who ranked the counties of York and Rutland as of equal importance.'

Never intended to represent every particular person; but the peculiarity of every particular place.

IF an equality was ever intended in the representation, it was, not that a number of members should be chosen according to the number of electors, but that every *place* of any consequence

consequence (1), (not every particular *person*,) in the kingdom, should have members to represent its situation, its commerce, and other local circumstances. Knights of the shires had the general superintendence over counties; citizens and burgeses, over particular cities and towns. By these means no peculiarity, any where, could remain unknown.

BUT if one seventh part of the members were to be consigned to the capital (and I understand the capital is computed to contain one seventh part of the inhabitants of the kingdom), could every peculiarity be represented, without enlarging the house of commons, to a degree dangerous to think of? If one seventh of the number of the representatives in the nation were to be chosen in the city of London only, it would surely throw both the electors and the elected into convulsions (2). The elections would become so tumultuous

Mischiefs attending such an alteration,

(1) See NOTE [NNN].

(2) If any one should think these arguments inconclusive, I would recommend him to read the Dean of GLOUCESTER'S *Four Letters on important Subjects*.

that they could not be attended but with the greatest danger. And would the evil be less in parliament itself? So great a number of members as must then be appropriated to the metropolis and its environs, constantly residing upon the spot, might form cabals and factions not easily to be resisted. If the proportion of the land-tax paid by their constituents should be thought too high, or their constituents could be peculiarly benefited by any alteration in trade, or otherwise, these partial advantages would probably be contended for with all the vehemence of eloquence; however unreasonable, inconvenient, or injurious, they might be to the rest of the nation. Members brought dispersedly from other places, could not perhaps be so easily united into an opposition. And if they could, possibly a numerous mobility might be called in as auxiliaries, to over-rule them.

C H A P. III.

Of the Proposition for adding an Hundred Members to the Counties and the Metropolis.

THIS proposition doubtless comes well recommended. **LORD CLARENDON**, **LORD CHATHAM**, and the present **MR. PITT**, his son, are considerable authorities. But let us examine their arguments.

Said to be recommended by Lord Clarendon, Lord Chatham, and the present Mr. Pitt, his son.

MR. PITT, in his late motion, seems in some measure to have been aware of the difficulties to arise from increasing the number of the representatives; and if I remember right, proposed, by way of lessening the force of the objection, to disfranchise any boroughs as they might, like New Shoreham, happen to misbehave. But if any expectation could be reasonably formed from such an expedient, while the remedy is preparing, would not the constitution expire? Supposing the *venal* boroughs, or those boroughs where the number of electors is few, were actually abolished; yet if
the

Examination of the argument of the present Mr. Pitt.

the *family* boroughs were suffered to remain, would it be any more than taking off a wart, and leaving the large wen behind ?

Of another
body of men.

A certain body of men, by way of recommendation of the measure, informs us, that a representation of this kind would be ‘purged
‘ from every visible taint of undue influence (1).’ But the writer of a *Letter to the Author of the Lucubrations during a short Recess*, tells us a very different story. His words are, ‘we have seen county members, under the
‘ influence of contracts, voting for the court:
‘ and yet they have been,’ he adds, ‘repeatedly
‘ returned.’ If so, a county representation is no better calculated to convey the sense of their constituents, than a representation by boroughs. Another writer (2) says, ‘The
‘ knights of the shires stand foremost certainly,
‘ in the rank of *independence* ; yet of all those
‘ knights of the shires who voted that the influence of the Crown ought to be reduced,

(1) 2 YORKSH. Assoc. Add. 17.

(2) The Author of a Letter on Parliamentary Representation, inscribed to JOHN SINCLAIR, Esq. M. P. p. 23. 3^d edition.

‘ which

‘ which they had universally supported, and
 ‘ afterwards opposed every measure that tended
 ‘ towards the reduction of that influence at
 ‘ the close of the last parliament, how few
 ‘ were rejected by their counties for that or
 ‘ any part of their political conduct. You
 ‘ will say then that their conduct was approved
 ‘ by their constituents, who did not wish the
 ‘ reduction of the influence of the Crown ;
 ‘ what then will be the excuse of those coun-
 ‘ ties who returned the same members in so
 ‘ many instances, *one of whom had always*
 ‘ *supported and the other opposed that influence?*
 ‘ Surely those constituents could not have held
 ‘ two contrary political opinions, or have
 ‘ equally approved of the opposite conduct of
 ‘ their representatives.’

LORD CHATHAM (3), in his argument upon this subject, says, ‘ Let us endeavour
 ‘ to infuse such a portion of new health’

Lord Chat-
ham.

(3) Free Parl. 58. The Author of which tells us, the speech, as he has given it, ‘ was taken by a gentleman of
 ‘ very distinguished character and abilities, and was never
 ‘ before published.’

[*young blood* (4) some say] ‘into the constitution, as may enable it to support its most inveterate diseases;’—that is, to bear with the corrupt gangrenous sore, the rotten boroughs. But does not this *recipe* put one in mind of the person, who attempted to restore youth to the aged, and vigour to broken constitutions, by *literally* infusing *young blood* into the body natural?

So great indeed are the difficulties attending the discussion of this subject, that this is not the only error this great statesman has run into concerning it. Speaking of what he very properly calls the *rotten boroughs*, ‘the limb,’ says he, ‘is *mortified*, but amputation would be death.’ Is then a mortification to be cured with young blood? The rotten boroughs are to *continue*, and yet—‘there ought to be a permanent relation between the constituent and the representative body of the people;’—‘taxation and representation are inseparable.’

(4) Letter to the Author of *Lucubrations* p. 28. Letter on Parliamentary Representation, inscribed to JOHN SINCLAIR, Esq. M. P. p. 28.

WHAT then shall be said of the opinion of Lord Clarendon. such a man as LORD CLARENDON ; a man who having executed the office of Lord High Chancellor, having himself written the public papers in favour of the royal cause in the reign of Charles I. and since that the history of that rebellion, must be supposed to have been well conversant in the laws, the history, and consequently the constitution of the kingdom ? I deny that LORD CLARENDON ever proposed, or approved, *in the present state of the representation, any addition* to the county members. Speaking of CROMWELL's not observing the old course, in sending writs out to all the little boroughs, he adds these words :
' he thought he took a more equal way, by appointing more knights for every shire to be chosen, and *fewer burgessees* ; whereby the number of the whole was much *lessened* ; and yet, the people being left to their own election, it was not by him thought an ill temperament, and was then generally looked upon as an alteration fit to be more warrantably

‘ warrantably made, and in a better time (5).’ But here a thing, very different from what is proposed at present, is observable; though *more* knights for every shire (to wit, all together, 261), were chosen, there were *fewer* burgesses (only 139) making in the whole no more than 400 members for England and Wales; a number, including the 30 allotted for Scotland, and 30 for Ireland, much short of 558, the number at present returned for England, Wales, and Scotland (6).

Questions
necessary to
be answered.
to satisfy the
people.

Men are often partial to their own opinions, or I think no one, not blinded by prejudice, when he comes seriously to consider it, could approve of the project contained in this proposition. Let him sit down and answer these questions. Are the members for counties always elected on the day of the election, *freely* by their constituents; or, the expence of

(5) Lord CLAR. Hist. Rebel. b. xiv. p. 386. RAPIN's Hist. of Eng. vol. xiii. b. xxii. p. 109. WHIT. Mem. p. 552. Instrument of Gov. Articles 9 & 10. HUME's Hist. Eng. c. lxi. p. 238. See Cromwell's plan for *new* modelling the representation in parliament, in HARRIS's life of Cromwell, p. 288.

(6) HARRIS's life of Cromwell, p. 343.

the election, deterring any from opposing them (7), are they not more generally *nominated* at a previous meeting, and often by a few persons only at that meeting; and, consequently, are they not subject to be influenced by private instead of public motives? If the electors be influenced by the *nobility*; what can be conceived more unconstitutional, than to throw that power, which so peculiarly belongs to the commonality, into the hands of the house of peers? When the numbers, and wealth, and consequently the power of the commons have visibly acquired so great a weight in the scale of government, can it be a wise measure intirely to destroy that equilibrium of power between the *legislative* assemblies and the *executive* authority, which, according to the most admired writers, can alone preserve the constitution (8)? If the number of representatives was so greatly increased as has been lately proposed, is there not reason to fear the house of commons, like the Polish diet, would become more remarkable for their violence than their wis-

(7). See NOTE [OOO].

(8) See NOTE [PPP].

dom? And if not, what human constitution, in so numerous, and consequently so disorderly an assembly, could bear the fatigue of being the speaker? Would the alteration make any change in the system of corruption; or would it not rather, by creating more wheels, require the more oil? Would not the project violate the contract made between England and Scotland at the Union? And in what way could the 100 members be proportioned among the counties, without altering the balance between the northern and southern parts of the kingdom, and creating an apprehension of an equal land-tax, or some other alteration equally obnoxious?

THE great advocate for the addition of 100 members, himself admits, that ‘ provided
 ‘ the members be firmly connected with the
 ‘ body of the nation, the liberty of the nation
 ‘ may be well protected by a house of com-
 ‘ mons, whose members do not exceed
 ‘ 300 (9).’ A truth, I should suppose, scarcely

(9) See Mr. WYVILL’s answer to the queries proposed by the committee of correspondence at Belfast, inclosed in a letter to Mr. HENRY JOY, Jun. secretary of the committee, dated August 22d, 1783.

to be doubted. Until the reign of Henry VIII. we have seen that the number of members, though now 558, was only 298. And I imagine it will be granted, that that number, if they had exerted themselves, would, at that time, have been sufficiently competent (as, much more, would 558 at the present period) to obtain any share of *liberty* which could reasonably be required. But when the house of commons became so greatly augmented in number, and they began to contend for *power* as well as *liberty*, what was the consequence? The Crown, at last, became so weakened, that, notwithstanding an almost boundless patronage, it could neither subdue a foreign enemy, nor suppress domestic faction; nothing but complaints were heard of, prodigality, misfortune, and discontent.

C H A P. IV.

*Of the Project for limiting the Number of the
Peerage.*

Peers lost
their weight
in the scale
of govern-
ment.

BESIDES the alterations which have been proposed for amending the representative assembly, it seems improvements have also been thought of for the upper house of parliament; and an attempt to limit the number of the peerage, which formerly miscarried, has again been revived in idea.

BUT have these reformers attended better to the true principles of the constitution, to the preserving of a proper equilibrium of power in the different branches of the legislature, than those who have thrown their shafts at the Crown? I fear all, or the chief of the attempts, come from the same quarter, and that the ultimate aim is only to aggrandize still more the almost irresistible power of the house of commons?

IF any person will cast back his thoughts In wealth.
to the time of the origin of the house of commons, he will find how strangely the balance of power between the two houses of parliament, both in wealth and numbers, and consequently in power, has been altered since that period.

IN regard to *wealth*, the commons have been enriched by commerce ; but the nobility have had no such resources. On the contrary, their possessions, instead of increasing, have been diminished. Freedom has been so much the characteristic of the times, that not only persons, but property, were to be free. The fetters were to be taken off entails, and freedom given to alienation ; and, in consequence of this freedom, the property, and consequently the power of the ancient nobility, was gradually transferred into the hands of the other house of parliament.

WITH respect to *numbers*, it is notoriously In numbers.
known, that the number of the knights, citizens, and burgeses in parliament, has been

more than doubled since their first institution (1).

In other respects.

KNOWING this, we cannot be much surprized to find the Crown deprived of all legislative authority, except a simple negative; and that the same things should have happened to the house of peers, in respect to that grand article of power—money.

Their dignity should be restored, not lessened.

BUT when we know, that the house of lords, as well as the prince, in this important article, that of granting the supplies, can barely deny them; that they are, in this respect, entirely at the mercy of the commons; that there is no other power from which danger can be reasonably apprehended; that, therefore, as was said of the king in his legislative capacity, possessing no ‘power of *doing*’ ‘wrong, but merely of *preventing* wrong’ ‘from being done (2),’ can any thinking

(1) ‘From Edward the First’s reign, to the end of that of Edward the Fourth, there were only 170 members sent to parliament from all the cities and burghs in England,’ ELLYS on Liberty, p. 393. JOHNSTON on Monarchical Government, p. 270.

(2) BLACK. Com. b. i. c. 2. p. 154. 2d 4to edit,

man deem it good policy to lessen still further so beneficial a power; a power to do good; and which, unless the house should ever unfortunately consider their right of assenting to the grants of the commons, as a privilege calculated rather for their own private advantage than the public benefit, can do no harm. In my mind, if any danger be to be apprehended from the constitution of the upper house of parliament, it will be whenever their wealth and numbers shall become so reduced, as not to give a dignity, and command sufficient respect and submission to their decisions. If the numbers, wealth, and power of the peers had been such, as not to have been intimidated from doing their duty in the reign of Charles I. most likely the misfortunes, which then fell out, would have been prevented.

As the grand *judicature* of the kingdom, a judicature from which there is no appeal; and where, therefore, an injury is dreadful, because it is an injury without possibility of redress; a tribunal of such high authority,

as not only to decide in the last resort between *subject and subject*, but disputes, in which there may stand at their bar the executive government itself as the accused, and the people of England, by their representatives, as the accusers: as *legislators*, the grand arbiters between the prince and the people, the great barrier to prevent all encroachment by either, they ought surely, both in wealth (3) and numbers, to impart an idea of wisdom, impartiality, and justice (4); so exalted as to be above the reach even of suspicion; and, consequently, maintain a dignity to excite a reverence of their decisions,

Improve-
ment sug-
gested.

As the house of lords are constituted on an idea of *wisdom*, impartiality, and *justice*; and dignity, that is, independence, is the very foundation of this principle, if one might presume to

(3) May it not be a question, whether it be constitutional to admit persons of small fortune, though for service done to the State, to an *hereditary* right in the peerage?

(4) MONTESQUIEU says, it is a maxim, *no nobility, no monarch; no monarch, no nobility*. 'But,' says he, 'there may be a despotic prince.' (The nature of *whole* government see explained in p. 4.)

suggest

suggest an improvement in the house of lords, it should be, not to lessen their dignity, by diminishing or limiting the number of their members, but to increase their dignity, by requiring in them, or, at least, in all new-made peers, a qualification so ample, that their own possessions should give a security against corruption, and insure in them *a common interest with the community*; an idea which is the foundation of that *virtue*, or principle, on which the *house of commons* also is founded. From the bishops, indeed, no qualification can be required; as they hold their seats by virtue of their ancient spiritual territories, called, under the Saxons, *frank-almoign*, or free alms; changed, by William the Conqueror, into the feudal or Norman tenure by barony (5); and the rather too, as they hold their honours but for life. Restore the dignity of the ancient barons, and the house of peers will, in some measure, be restored to their ancient weight in the scale of government. If a qualification be requisite in the

(5) BLACK. Com. b. i. c. 2. p. 156. and b. i. c. 12. p. 400.

members of the lower house of parliament, is it not strange no qualification should be required in the members of the highest; and especially, when (to repeat what is said before) their territories, which are to give them dignity, are the very foundation of the principle of their constitution (6)? Should a peer be so indiscreet as to reduce his fortune, and become dependent, he ought to be degraded (7). A state of dependence is inconsistent with the dignity which is required in a peer of Great Britain. Whenever it shall happen, that men in distressed circumstances shall make a part of the British peerage, undoubtedly the equilibrium of power would be

(6) 'Excess of poverty is a pernicious thing in an aristocracy. To prevent their poverty, it is necessary, *above all things*, to oblige them to *pay their debts* in time.' Sp. L. b. v. c. 8. See Note [MM].

(7) In the 4th of Edward, a duke of Bedford was degraded by act of parliament on account of his poverty. 4 Inst. 355. BLACK. Com. b. i. c. 12. p. 403. The preamble to the act is remarkable: 'Forasmuch as oftentimes it is seen, that when any lord is called to high estate, and hath not convenient livelihood to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great extortion, embracery, and maintenance to be had, to the great trouble of all such countries where such estate shall happen to be: Therefore, &c.'

endangered.

endangered. Contrary to their institution, it would invite, what of all other things ought to be avoided, ill-designing parties, faction, and their concomitant corruption. Whereas, the opulence and dignity of the peers of Great Britain should be such as to preclude, as far as human provisions can preclude, both faction and corruption; or, in the language of Sir WILLIAM BLACKSTONE, their subservience to either of the other branches of the legislature. As the law pays that regard to the word, or honour, as it is called, of a peer, as to esteem it equal to another man's oath, so his actions should have that respect paid to them, as not even to be suspected.

C H A P. V.

Of the Scheme for chusing into the Ministry neutral Men, and Men of Capacity, Impartiality, and Disinterestedness.

RAPIN, in his *Dissertation on the Origin of the Government of England* (designed, as I imagine, to give the world the benefit of all his labour and observations), seems to recommend,

The scheme of Rapin.

commend, that the highest posts in the nation should be filled with *neutral* men [*neutral lords* (1), I think is his expression], men of *capacity, impartiality, and disinterestedness* (2). 'A dozen of such *noblemen* in England, in the most eminent posts,' says he, 'would infallibly crush both factions at once (3).' [*sed qu.*] This is exactly conformable to his principles. Notwithstanding his remark, already noticed, of the views of parties, which was a thing too obvious to be concealed, he seems to have thought, that all the fault in the conduct of public affairs lay entirely with the Crown; and having, as he conceived, guarded against that, he imagined nothing more to be necessary. But any one that has taken the trouble to read thus far of this performance, will perceive, that, to obtain perfection, much more would yet remain to be

(1) From this expression, are we to suppose RAPIN apprehended, that *members of the house of commons* would have 'too much inclination to keep up the greatness of that place, to which they might think they owed their own greatness.' Lord CLAR. Hist. Rebel. b. iii. p. 156.

(2) RAPIN's Dissert. on the Orig. of Gov. in his Hist. Eng. vol. xiv. p. 436.

(3) Ibid. p. 437.

done; that if the king's ministers were ever so *neutral* in their notions, of ever such *capacity, impartiality, and disinterestedness*, it would be almost next to an impossibility, under the present system of government, to manage public affairs, for any length of time, with reputation, in the way that was done by Q. Elizabeth.

ALMOST the very last words in RAPIN'S Dissertation on the Origin of the English Government are, ' I do not see what can put an end to the sort of civil war carried on in England, but the prudence of a just and equitable sovereign, moderate in his desires and passions; a lover of the protestant religion, and one that makes the good and happiness of his subjects his sole care and study.' If this were really all that was necessary, I need not hesitate to say, England would at this time be the happiest nation upon earth.

Would not be effectual without something more.

MANY men, however, besides RAPIN, entertain the very same notion. Whenever any thing

The opinions of other men.

thing goes amiss in government, they imagine the whole rests only on what man is prime minister; as if the English government were an absolute monarchy, and our liberties and happiness depended solely on one man's disposition: whereas, it is only 'in the infancy of societies, that the leading men in the republic form the constitution; afterwards, the constitution forms the leading men in the republic (4).'

OTHER men, on the contrary, seem to conceive, that political liberty, and consequently civil liberty, can be met with only in a well-constituted house of commons; that 'there' all matters of government ought to be 'concerted;' and that, 'if there be a receipt, a nostrum for the making of a weak government, it is by giving the power of contriving measures to one, and the nomination of the persons who are to carry those measures into execution, to an-

(4) MONTESQUIEU on the Rise and Fall of the Roman Empire, p. 3.

‘ other (5).’ And, as in former times, a man was deemed a malignant and delinquent, who did not, without murmuring, submit to this kind of doctrine ; so, in the present, an army, where the rule is absolute, is thought to be its happiest illustration (6).

NEVERTHELESS, is the doctrine constitutional? True ‘ political liberty, certainly, is only to be met with where there is no abuse of power. Constant experience, indeed, shews us, that every man invested with power is apt to abuse it. And, strange as it may seem, most true it is, that even virtue itself has need of limits. To prevent, therefore, the abuse of power, it is necessary, that, by the very disposition of things, *power should be a check to power* (7).’

The true notion.

It is not in the perfecting of any one branch of power, that the art of government

(5) This is said to have been a part of Mr. F.—’s speech on the India bill, the 16th July 1784 ; but as it is only newspaper intelligence, its authenticity must be referred to those who were present, and heard it.

(6) Ibid.

(7) Sp. L. b. xi. c. 4.

consists ;

consists ; but rather in the distribution of all the powers of government ; legislative, executive, judicial, fiscal, ecclesiastical, maritime, military, and inquisitorial ; in the constitution and distribution of each particular power ; and in the connection of the whole. As a piece of human mechanism, government should consist of many parts ; each part should be so constructed as to perform a particular office ; and the several parts or movements should be so connected, as however seemingly discordant, to conduce to the uniform and regular movement of the whole (8) : and the whole should be so equally *balanced*, as to produce, if such a thing be possible in human affairs, a perpetual motion ; a motion resembling that of those various parts of the universe, which, by attraction and repulsion, action and re-action, produce the most exact regularity, and continue ever the same.

ACCORDINGLY, every power of government relating to the *person* of the subject, le-

(8) ' In the same manner as discords in music contribute to the general melody of sound.' MONTESQUIEU on the Grandeur and Declension of the Romans, p. 151.

gislative, judicial, executive, and inquisitorial, is most wonderfully distributed. ‘ The legislative body being composed of two parts, one checks the other, by the mutual privilege of rejecting. They are both checked by the executive power, as the executive is by the legislative (8).’ The *judicial* power is not only separated from the legislative and executive, but is itself also subdivided into many parts. A *justice of peace* may commit; but it must be upon proof of an infringement of the law; and that proof must be set forth in his warrant of commitment. A writ of *habeas corpus* may command the body, and this warrant to be produced to the court of king’s bench. The legality of the commitment is there examinable. If the commitment be unlawful, the prisoner must be discharged; if the case be bailable by law, ‘ excessive bail must not be required (9).’ Care being thus taken for the security of society, and the liberty of the accused, power is then shifted into other hands. A *grand jury* are to find the indictment or instrument of accusation. Another *jury*, the

(8) Sp. L. b. xi. c. 6.

(9) Bill of Rights, 1 Will. & Mary, sess. ii. c. 2.

peers or equals of the party accused, who, from a similarity of situation, may be his advocates, but can never be his adversaries; men who, being unknown till, as it were, the moment of the trial, can be scarcely supposed to have entertained any partiality or prejudice, or have any private end to answer; but who being, nevertheless, subject to an almost unlimited right of challenge or objection by the prisoner, may, in some measure, be said to be judges of his own choosing; these, I say, are the persons with whom the law has intrusted that which, next to the power of declaring what shall be the law, is more 'interesting to mankind than * any other thing in the universe (10);' I mean the power of declaring any one guilty or not guilty of any particular fact (11) which the law has declared to be criminal (12). Unlike the practice in those countries where the civil law prevails, the whole trial is to be had, as it were, before the tribunal of the *people*. The prisoner has a right to confront and cross-ex-

(10) Sp. L. bi. xii. c. 2.

(11) See NOTE [QQQ].

(12) See NOTE [RRR].

amine the witnesses against him ; and to *combat evidence with evidence*. The pleadings of the counsel, the evidence of the witnesses, the verdict of the jury, the sentence of the judge, are all open to the examination and censure of the public. Any one takes down the whole proceedings in short hand, and it is usual to publish them to all the world (13).
 ' All grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void (14).' For error in the proceedings, judgment may be arrested. When the fact is established by, what is emphatically styled the *verdict* of the jury, and no sufficient reason is alleged why judgment should not be given, the judge pronounces the punishment inflicted by the law for such a particular fact (15). But it is not that sentence which an arbitrary or capricious will might dictate,

(13) If this liberty be proper where the law is only to be *executed*, is it not equally proper where the laws are to be *made* ; particularly in that assembly where, the members representing the people, it is important to the people to know how every individual member has behaved himself, and acquitted himself of that trust which has been confided to him by his country.

(14) Bill of Rights, 1 Will. & Mary, sess. ii. c. 2.

(15) Sp. L. b. vi. c. 3.

but that which a law, binding equally every individual, has declared to be a general rule of civil conduct; and to know this, a learned writer observes, 'the judge needs only open ' his eyes (16).' The punishment by fine and imprisonment is commonly *discretionary*, to be suited to the aggravations, or otherwise, of the offences, the quality and condition of the parties, and innumerable other instances; but it is not *arbitrary*; by the bill of rights, 'excessive fines are not to be imposed, nor 'cruel and unusual punishments inflicted.' Should a judge act wilfully contrary to his duty, he may be impeached. Should the rigour of the law be thought too great, though it cannot be increased, it may (excepting on appeals of murder and parliamentary impeachments) be moderated by a pardon or mitigation of the sentence. And when at last justice is to be done, it must be executed by the *sheriff* with no greater degree of cruelty than a mild system of laws has judged sufficient, rather for prevention of crimes, than for punishment of offenders; leaving the *expiation* of the offence

(16) Sp. L. b. vi. c. 3. See, *E contra*, EDEN's Pen. Law, p. 319.

to the judgment of that supreme tribunal which governs the universe.

Thus in *criminal* affairs relating to the *person* of the subject, and also in the *civil* contests which take place between individuals concerning *property*, power is so checked by power, it is almost next to an impossibility that power should be materially abused. Such a community of interest is made to take place among all ranks of men, governors and governed, that 'every individual member of the government may be said to advance the public good, while he only thinks of promoting his own particular interest (17).' And thus is obtained that which is the true end or object of all judicial power, namely, *justice*.

BUT has the same care been taken of *property* in *political* regulations? Is power so checked by power in every department, legislative, *fiscal*, and inquisitorial, that power cannot be materially abused? Does such a community of interest take place among the go-

(17) Sp. L. b. iii. c. 8.

vernors and governed in this respect, as to make every member of the government advance the public good, by promoting his own particular interest? And, consequently, is equal provision made for obtaining the end or object of the *fiscal* branch of government, which is *frugality*?

Is power checked by power in that part of the *legislative* branch of government which enjoys the important privilege of granting or *raising* money; the representative by the collective body of the people every session of parliament, as in former ages? or has an alteration in this respect happened in the constitution; the duration of parliaments become extended to a considerable number of years (18); and many members of parliaments, intended to be the temporary representatives of the people, become even hereditary? Have the house of commons now, as in times of old, a common interest with the community; or is the privilege which was given of granting money for public purposes perverted, and con-

(18) See NOTE [SSS].

sidered

sidered only as a means of answering the ends of private interest or ambition? Is prodigality in the administration of the public treasure, consequently, become greater or less than in former ages?

Is power checked by power in the *fiscal* branch of government, which is intrusted with the *application* of the public money, so as to procure *frugality*, the object of the institution, the true preservative of *property*; in like manner as, by opposing power to power in the judicial department, *justice* is obtained, and the subject's *person* protected; or are private individuals, and even inferior agents, suffered to amass unconscionable fortunes in various public departments; have 17½ millions been neglected to be audited for twenty years and upwards (19); and large balances left in the hands of public accountants for years, and in a manner for ages (20)?

ARE the members of the *inquisitorial* power in the exercise of their functions, like a jury,

(19) See 10th Report of the Commissioners of Accounts.

(20) Ibid.

disinterested and unconcerned in the event of their resolutions, other than as members only of the same community; or, instead of using their power in order to correct *abuses* in the executive and fiscal departments, is their authority made use of by certain ambitious men, only to *acquire power* in the executive department; and by certain mercenary men, only to obtain employments in, or benefits from, the fiscal?

SHOULD an unfavourable answer be returned to these questions, we must not wonder if, instead of virtue, we should meet with venality; instead of power or strength, weakness; instead of liberty, licentiousness; and instead of frugality, which is a great mark of virtuous government, we should hear of nothing but prodigality. There would surely be no wonder in all this; the wonder would be, were the matter otherwise.

WHATEVER republicans may pretend, such evidence will bring conviction to every impartial mind, that necessity requires the inquisitorial, as well as the executive power
being

being kept within constitutional limits; that there is as great a necessity for power being checked by power in the several departments of the government, which affect the *property* of the subject, legislative, fiscal, and inquisitorial, as in the judicial, which affects his *person*.

LET us recollect that ‘by a malady for ever incident to man, the plebeians at Rome, who obtained tribunes merely for their own defence, employed those very magistrates to annoy others; so that they stripped, by insensible degrees, the patricians of all their privileges: a measure which gave rise to everlasting contests (21):’ that, as I believe is before observed, when the legislative and inquisitorial power of the house of commons in the time of Charles I., instead of using their authority to regulate the royal power of dissolving parliaments (22) made use of it to take away a power which was the only check upon

(21) MONTESQUIEU on the Rise and Fall of the Roman Empire, p. 107.

(22) See NOTE [TTT].

their

their own; a king soon became ‘burthen-
‘some;’ the house of lords ‘dangerous;’ and
the executive power being no longer a check
to legislative power, it was easy to foresee that
men, who, because they called themselves the
representatives of the people, could think them-
selves intitled to the *whole supreme* or legisla-
tive power, would easily conceive it to be as
good a title to the *subordinate* executive power
of government. Every power, legislative and
executive, was accordingly assumed; every
power was abused; and the nation had a me-
lancholy proof, that a power so immense,
lodged in the hands of a set of factious dema-
gogues, was ill calculated to produce corporal
and mental liberty, or tranquillity to the *person*
of the subject; and that frugality, which is the
offspring of virtue, and the political conser-
vator of *property*.

LET us recollect that the house of commons,
in the reign of Charles II., instead of using their
privilege of granting money, for their own
preservation, again employed it, like the Ro-
man tribunes, to annoy others; to annoy, or
rather to destroy the house of peers; and that
they

they would have again effected their purpose, had not the house of lords been as attentive to their own preservation as the house of commons are of theirs in money bills, and made a standing order to reject, on sight of it, every bill to which the house of commons tacked a money-bill (23).

‘ Since, therefore, even virtue itself has need of limits,’ let us follow the advice of the excellent MONTESQUIEU ; let not any leading men, however fair their characters, however neutral, capable, impartial, and disinterested, form the constitution of England ; for that is no more than the most arbitrary government may pretend to. But let the constitution so form the leading men, that they may be compelled, as it were, to be, if not men of capacity, at least neutral, impartial, and disinterested ? A writer, whom I have always a pleasure in quoting, informs us, ‘ that in order to form a moderate government, it is necessary to combine the several powers, to regulate, temper, and set them in motion ; to give,

(23) DE LOLME, *Const. Eng.* b. ii. c. 17. p. 369. 4th edition.

‘ as it were, ballast to one, in order to enable
 ‘ it to resist another; and that this is a master-
 ‘ piece of legislation (24).’ This is a consum-
 mation of human *reason* devoutly to be wished;
 a consummation indeed ‘ rarely produced by
 ‘ hazard, and seldom attained by prudence. On
 ‘ the contrary, a despotic government offen-
 ‘ itself, as it were, at first sight; it is uniform
 ‘ throughout; and as *passions* only are requi-
 ‘ site to establish it, this is what every capacity
 ‘ may reach (25).’

‘ ALL governments, under whatsoever form
 ‘ they are administered, ought to be admi-
 ‘ nistered for the good of the society; when
 ‘ they are otherwise administered, they cease to
 ‘ be government, and become usurpation (26).
 ‘ This being the end of all government, even
 ‘ the most despotic have this limitation to their
 ‘ authority: in this respect, the only difference
 ‘ between the most absolute princes and
 ‘ limited magistrates, is, that in free govern-
 ‘ ments there are *checks* and *restraints*. ap-

(24) Sp. L. b. v. c. 14.

(25) Ibid.

(26) Ibid. b. xi. c. 3. See Note, p. 281. No. 1.

‘ pointed and expressed in the constitution
 ‘ itself: in despotic governments, the people
 ‘ submit themselves to the prudence and dis-
 ‘ cretion of the prince *alone* ; but there is still
 ‘ this tacit condition annexed to his power,
 ‘ that he must act by the *unwritten* laws of
 ‘ discretion and prudence, and employ it for
 ‘ the sole interest of the people who give it to
 ‘ him, or suffer him to enjoy it, which they
 ‘ ever do for their own sakes (26).

‘ So that the nature of government does
 ‘ not alter the natural right of men to liberty,
 ‘ which in all political societies is alike their
 ‘ due: but some governments provide better
 ‘ than others for the security and impartial
 ‘ distribution of that right. There has been
 ‘ always such a constant and certain fund of
 ‘ corruption and malignity in human nature,
 ‘ that it has been rare to find that man, whose
 ‘ views and happiness did not center in the
 ‘ gratification of his appetites, and worst ap-
 ‘ petites, his luxury, his pride, his avarice,
 ‘ and lust of power; and who considered

(27) CATO's Letters, No. 59. p. 183.

‘ any

‘ any public trust reposed in him, with any
 ‘ other view than as the means to satiate such
 ‘ unruly and dangerous desires !

‘ FOR these reasons, and convinced by woful
 ‘ and eternal experience, societies found it ne-
 ‘ cessary to lay *restraints* upon their magi-
 ‘ strates or public servants, and to put checks
 ‘ upon those who would otherwise put chains
 ‘ upon them; and therefore these societies
 ‘ set themselves to model and form national
 ‘ constitutions with such wisdom and art, *that*
 ‘ *the public interest should be consulted and car-*
 ‘ *ried on at the same time, when those entrusted*
 ‘ *with the administration of it, were consulting*
 ‘ *and pursuing their own* (28).

‘ HENCE grew the distinction between ar-
 ‘ bitrary and free governments; not that
 ‘ more or less power was vested in the one,
 ‘ than in the other; nor that either of them
 ‘ lay under less or more obligations, in justice,
 ‘ to protect their subjects, and study their ease,
 ‘ prosperity, and security, and to watch for

(28) See also Sp. L. b. iii. c. 8. BLACK. Com.
 b. i. c. 2. p. 157.

• the same. But the power and sovereignty
 • of magistrates, in free countries, were so qua-
 • lified, and so divided into different channels,
 • and committed to the direction of so many
 • different men, with different interests and
 • views, that they could seldom, if ever, all (29)
 • find their account in betraying their trust.

• *THE only secret therefore in forming a free*
 • *government, is to make the interests of the go-*
 • *vernors and of the governed the same* (30), as
 • far as human policy can contrive. Liberty
 • cannot be preserved any other way. Men
 • have long found, from the weakness and
 • depravity of themselves and one another,
 • that most men will act for interest against
 • duty, as often as they dare. So that to en-
 • gage them to their duty, interest must be
 • linked to the observance of it, and danger to
 • the breach of it (31). Personal advantages
 • and security must be the rewards of duty

(29) I have taken the liberty here to make a small alteration, and the reason will be sufficiently obvious to any one who will be at the trouble of examinng the original.

(30) See p. 184, and the authorities there cited.

(31) See Note, p. 279. No. 22.

• and

‘ and obedience ; and disgrace and death
 ‘ the punishment of treachery and corrup-
 ‘ tion (32).

‘ No wise man, therefore, will, in any in-
 ‘ stance of moment trust to the *mere integrity*
 ‘ *of another*. The experience of all ages may
 ‘ convince us, that men, when they are above
 ‘ fear, grow for the most part above honesty
 ‘ and shame ; and this is particularly and
 ‘ certainly true of *societies of men*, when they
 ‘ are numerous enough to keep one another
 ‘ in countenance, for when the weight of in-
 ‘ famy is divided amongst many, no one sinks
 ‘ under his own burden.

‘ GREAT bodies of men have seldom judged
 ‘ what they ought to do, by any other rule
 ‘ than what they could do. What na-
 ‘ tion is there that has not oppressed any
 ‘ other, when the same could be done with
 ‘ advantage and security ? What party has
 ‘ ever had regard to the principles which they
 ‘ professed, or ever reformed the errors which
 ‘ they condemned ? What company, or par-

(32) Cato's Letters, No. 60.

‘ ticular

‘ ticular society of merchants or tradesmen,
 ‘ has ever acted for the interest of general
 ‘ trade, though it always filled their mouths
 ‘ in private conversation ?

‘ AND yet men, thus formed and qualified,
 ‘ are the materials for government. For the
 ‘ sake of men it is instituted, by the prudence
 ‘ of men it must be conducted ; and the *art*
 ‘ of political mechanism is, to erect a firm
 ‘ building with crazy and corrupt materials.
 ‘ The strongest cables are made out of loose
 ‘ hemp and flax ; the world itself may, with
 ‘ the help of proper machines be moved by
 ‘ the force of a single hair ; and so may the
 ‘ government of the world, as well as the
 ‘ world itself (33).

C H A P. VI.

*Of the Proposal for an equal Representation and
 Annual Parliaments.*

OTHER writers having had the advantage of more experience than Rapin, and seen into the fallaciousness of his doctrine,

The representation
 wants
 amendment.

(33) Cato's Letters, No. 61.

E e

‘ have,

Equal representation, an equivocal term, creating a strange confusion of ideas.

Instead of an equal representation and annual parliaments, we should read free and frequent elections.

have, in my mind, with better reason turned their thoughts towards amending the representation of the people in parliament. But, unfortunately, no clear distinct idea seems yet to be formed, either of the meaning of representation, or the means of amending it. *Equality* is the term I think that is chiefly adopted; but even this is confused; some persons, by an *equal representation*, meaning an *equality* among the *constituents*, or an universal right of suffrage; while others intend by it an *equality* among the *representatives*, or that each member should be chosen by an equal number of electors. And where distinctions thus have been made, we see the greatest absurdities in maintaining the different constructions. ‘Annual parliaments, with an equal representation of the commons,’ says a certain writer (34), ‘are the only specifics, and they would effect a radical cure.’ This writer is not like Mr. RAPIN; he does not place his dependence altogether on the virtue of the prince, but, more rationally as I conceive, in the virtue of the representatives of the people. He

(34) Author of Legislative Rights, &c. p. 104.

seems to have had a glimpse of the truth; and had he a little varied the expression, and recommended a real representation of the sentiments of the people by *free elections*, and *new parliaments* to be held *frequently* (35), probably his doctrine would have been more deserving of attention, than it appears to be in the present defective state of the representation.

(35) It is however but justice to this Author to observe, that Dr. PRICE conceives the scheme contained in his book of *Take your Choice*, a *practicable model* for a *complete representation*. Addit. Observ. on Civil Liberty, p. 37.

B O O K VI.

Conclusion.

A summary
of the con-
tents.

WHAT, then, is the total sum of this Essay? That the remedies provided by the *legislature* have been *inadequate*; that the schemes propounded by *private individuals* have been apparently *pernicious*; but that, were the inhabitants of every considerable *place fairly represented* in parliament; had the members, when chosen, a *common interest with the community*; and (to keep them within the bounds of their duty) were they *removeable, if needful, as formerly, at the end of every session, when they had given a proof how they had behaved themselves*; and were the *constitutional boundaries of their duty clearly ascertained*; in few words, were faction and corruption banished the house of commons, the house would possess *virtue*, and the confidence of the people; the people would enjoy *liberty*, and the government *power*; *pro-*
fusion

fusion would cease, and we should be a *free and happy people, a glorious nation.*

It would be too presumptuous in me to pretend, that what is here mentioned are precisely the *only right measures* to be pursued. To mark out the exact line of conduct which ought to be adopted, is, perhaps, too much for the limited understanding of any individual. It will be sufficient for me, if I have pointed out the object; let others find out the path by which it may best be come at. But surely the subject is of great importance: something is certainly *wrong*. Our *public treasure* is *profusely squandered*; we are *unsuccessful abroad*; at home we are *discontented*. To say nothing of places, pensions, contracts, loans, subscriptions, lottery tickets, or secret service-money; it will be sufficient to observe, that from the Tenth Report of the Commissioners of Accounts, some late prosecutions, and the fortunes that have been amassed by private and inferior persons in our military operations in America, a criminality in the expenditure of the *public money,*

E c 3

money, and a negligence of inquiring into it, have, of late years, marked our proceedings in a manner shocking to those who have any regard for their country (1). *Our ill success abroad* is too fatally proved by the loss of our dominions. And surely no one can say we have no *discontents at home*, if he looks either at Ireland, or his own country. Some *disease* there certainly is, which is secretly preying on the vitals of the constitution. Following the example of Rome, Sparta, and Carthage, the constitution seems to be verging fast towards its dissolution. Governed by men destitute of sufficient legal and constitu-

(1) ' Our common rogues now scorn little pilferings, and in the dark ; 'tis all public robbery, and at noon-day ; nor is it, as formerly, for small sums, but for the ransom of kings, and the pay of armies ; figures of hundreds and thousands have lost their use in arithmetic ; *plumbs* [a cant word, known to mean an hundred thousand pounds] alone are thought worth gathering ; and they no longer signify hundreds of thousands, but millions ; one great man, who is said, in a former reign, to have plundered a million and a half, has made his successors think as much to be their due too : *possession of great sums is thought to give a title to those sums* ; and the wealth of nations is measured out and divided amongst private men, not (as by the West India pirates) with shovels, but waggons.' CATO'S Letters, N^o 20.

tional

tional knowledge, measures of direct opposite effects are adopted; and yet both equally faulty.

ONE set of men is for governing by acts of violence. With the colonies in America, at one time, nothing would serve but unconditional submission. Whereas, there was once an opportunity, which, had the learned judges, or any others of competent knowledge of the laws of nature, the law of nations, the political and civil laws of England and the colonies, and of the origin, history, and reason of these laws (2), been consulted, what was fit for the colonies to grant, and this kingdom to require; or, in the language of the Petition from America, which was delivered to the king, ‘ by what mode the application of the colonists might have been improved into an happy and permanent reconciliation;’ had we, like king John, granted them a great charter of enfranchisement, securing to them personal safety, personal liberty, and their private property;

The error of the policy in regard to the colonies.

(2) See NOTE [UUU].

had we secured to them as perfect a judicature and legislature as they ever did, they now do, or perhaps they ever can enjoy; one would think men not totally blinded by prejudice might have perceived, that they might enjoy a competent system of *liberty*, by resting the *power* of government on its ancient foundation. They might surely have been convinced, what experience must now teach them, that one king was better than a multitude of kings. They might surely have been satisfied, that, to have a numerous and fluctuating executive power, was not the way to obtain unanimity in deciding, uniformity in decision, or that strength, power, and vigour, which is necessary to carry what is resolved on into execution; that that must be a defective scheme for obtaining liberty, which joins with the executive the legislative power, and that in the most important point of legislation (3). At the union of England and Scotland, we may remember it was stipulated, that when England raised 2,000,000 *l.* by a land-tax, Scotland should raise 48,000 *l.*;

(3) See NOTE [VVV].

and

and that the laws relative to trade, customs, and the excise should be the same in Scotland as in England. Laws relating to *private rights* were not to be altered, but for the evident utility of the people of Scotland. But laws relating to the *public policy* were left to the discretion of the British legislature. This mode might not indeed have answered exactly for the colonies ; but even this kind of system, without any right of representation at all in England, would have been highly preferable, one would think (especially in case it had been stipulated, that the money raised should have been expended in or for the benefit of the colonies), to that kind of government which was afterwards formed. With care and attention, a plan of government might surely have been contrived under such limitations, as to free the colonists from all fear of oppression, by securing to them the power of framing *civil laws* for the regulation of the citizen, and by limiting the power of making those *political laws* affecting *property*, which might be required to relieve the necessities of the State ; and satisfy them that they might enjoy both liberty and power, in
a degree

a degree very little, if at all, inferior to that of England; and, as his present majesty said, in one of his speeches to parliament, that, "to be a subject of Great Britain, with all its consequences, was to be the freest member of any civil society in the known world;" with men who have consented to authorize congress (4) to order a revenue, and an army to be raised, without any consent of the provincial legislatures; who have consented to restrain the provincial legislators from raising any military force, without the consent of congress; who, in short, could be contented to suffer the legislative powers only to find out the *ways and means* of raising the taxes, and suffer the executive to impose taxes to *any amount*, and to enjoy the sole power, after the ways and means were provided, of *collecting* and *disposing* of them; and that without impeachment, and without controul, other than by frequent elections, and a power of amotion; I say, with men who could be contented with such a form of government,

(4) See the several articles of confederation, dated respectively the 4th Oct. 1776, and the 4th July 1778.

the fixing the proportion of taxes to be raised by the colonies towards supplying the exigencies of the State (5); and even the fixing a plan of public policy for the government of the two nations, at least in those matters which related to *commerce* (which ought to have been our object in the contest (6),) could not have been a matter of such mighty difficulty when Mr. Penn came over, if, as was formerly done with Scotland (7), commissioners had been appointed to treat of an union between the two countries. This, however, was not attempted. It was thought, it seems, to be the only eligible plan to subdue the bodies rather than the minds of the colonists; that it was *impossible* to govern but as the Romans governed their provinces (8), by force,

(5) See NOTE [WWW].

(6) See NOTE [XXX].

(7) In excuse for our politicians in these days, it must, however, be acknowledged, that the union of England and Scotland, projected by James I. was thought a matter of so much difficulty, even by lord chief justice Coke, and the politicians of those times, that it was not effected till the 5th of Q. Anne. BLACK. Com. Introd. f. 4.

(8) Sp. L. b. xi. c. 19.

and

and not by reason, the will, or consent of the body governed.

Ireland.

ANOTHER set of men, decrying the conduct of these rulers, on a similar dispute with Ireland, another of our dependencies, instead of governing by acts of violence, and requiring unconditional submission, pass into the other extreme; and give up, without condition, not only the judicial, but all legislative authority of this country over Ireland ‘*in all cases whatever*’ (9). But was this an act of prudence? Was it an act of common attention, either to the interests of England or Ireland, particularly of Ireland, whose interests are so united with that of England, that her very preservation may be said to depend on that union? Sir WILLIAM BLACKSTONE (10) seems to think, that it is ‘the very nature and constitution of a subordinate dependent State,’ to be bound by the acts of the legislature of the supreme government. And MONTESQUIEU (11), if I

(9) Stat. 23 Geo. III. c. 28.

(10) BLACK. Com. Intro. f. 4. p. 103.

(11) Sp. L. b. xi. c. 19.

am not mistaken, holds the same opinion. As to the judicial power exercised in England over Irish causes in the last resort, Sir WILLIAM (12) thus expresses himself: ‘ The propriety, and even necessity, in all inferior dominions, of this constitution, “ that, though justice be in general administered by courts of their own, yet that the appeal, in the last resort, ought to be to the courts of the superior State,” is founded upon these two reasons : First, Because otherwise the law, appointed or permitted to such inferior dominion, might be insensibly changed within itself, without the assent of the superior. Secondly, Because otherwise judgments might be given to the disadvantage or diminution of the superiority ; or to make the dependence to be only of the person of the king, and not of the Crown of England (13).’ Admitting, however, that it might be reasonable, that the municipal law of Ireland, respecting all *private rights*, every thing relating to *civil* and *criminal* jurisdiction in Ireland, whether *legislative* or *judicial*,

(12) BLACK. Com. Introd. s. 4. p. 104.

(13) VAUGH. p. 402.

should be left to their own management and care ; in other words, that they should have a good system of *liberty* (civil liberty) ; surely it was rather too much for the parent State to give up the guardianship of the *public political interest* of the whole community, and relinquish the great *power of government*, and yet take upon itself the whole of the debt which had been incurred for the benefit of both countries. To repeat the words of Sir WILLIAM BLACKSTONE, have we not ‘ made
 ‘ the dependence to be only of the person of
 ‘ the king, and not of the Crown of England ?’
 Can the people of Ireland be now said to be *subjects* of *Great Britain*, when they are not *subject* to any one act of the whole legislature of the country ? If they be not subject to any act of the whole legislature, the sovereign authority of this kingdom, surely we have lost our sovereign power ? Will not this lead to endless disputes ? Is no proportion of land-tax, customs, excise, &c. to be furnished by Ireland ? Did the alacrity the Americans shewed in taxing themselves, teach us this policy ? Are Ireland and England to contradict one another in their laws respecting
 trade

trade and navigation? Like the pope, who writes himself *servus servorum Dei* (14), James I. said, That a king is only the servant of the public (15): if this be true, can the king serve two masters? We are told, from the highest authority, he cannot. Surely this policy, then, was as strange as that of the former ministry. The misfortune, indeed, of both parties, if I may be permitted, in so important an affair, to give an opinion, seems to have been owing to this (for I cannot think any minister could be so wicked, as to give up Ireland merely to reduce the power of the Crown), neither have given themselves the trouble to inquire what liberally, legally, and constitutionally ought to have been done. Should this *really* have been the case, would it not be ad-

(14) FORTESCUE on Absolute and Limited Monarchy, p. 8. Lord LYTT. Hist. Hen. II. vol. iii. Note p. 453.

(15) BURGH's Pol. Disq. vol. ii. p. 94. Perhaps, some persons may think the kings of England are now reduced to the condition of the Cacique, who, being asked, Whether he had any slaves? Answered, Slaves! I know but one slave in all my district, and that is myself. JUSTAMOND's Translation of Abbé REYNAL's Hist. of the Settlement and Trade of the Europeans in the E. and W. Indies, vol. v. p. 414.

visable

visable to set on foot an inquiry into the principles of the constitution. But, seeing the ill effects of former policy, let us avoid extremes.

General recommendation.

LET us, on the one hand, neither require unconditional submission, and reject ‘all alterations in the constitution whatsoever;’ nor, on the other, do as we have done with Ireland, be so abject as to yield to plans apparently tending to destroy the constitution. Let us lay aside all party views. Let us no longer hear an invidious distinction made between the *king’s friends* and the *friends of the people*. Let our zeal only be, to be *friends to the constitution*. Let us zealously endeavour to establish the government on unerring principles; that is, to obtain ‘*virtue* or goodness;’ to endeavour always to promote the real interest of the community; *wisdom* to distinguish, and *justice* (16) to decide, what is that real interest, and strength or *power* to carry every well digested scheme, proposed by virtue, approved by wisdom, and decreed

(16) The house of lords is the highest court of *justice*.

‘ by justice, into complete execution.’ Then we shall establish, on foundations not to be shaken, that which is the object and ultimate aim of government, LIBERTY; fully possess what Nerva was deified for uniting, IMPERIUM ET LIBERTAS, and may bless this as an æra as glorious as the reformation of religion, the restoration of monarchy, or the revolution; the æra of the confirmation of the true *principles* of the government (17).

THIS is truly the grand object of reformation; and, whatever others may pretend (18), demands the *first* attention of those who claim to be the *representatives of the people*. ‘Members of parliament are not distinguished from the rest of their fellow subjects, merely that they may *privilege their persons, their estates, or their domestics*; that they may *list under party banners*; may *grant or withhold*

(17) In the King’s Speech to the two Houses of Parliament, on the 25th of Jan. 1785, I observe, his Majesty, like a true patriot, graciously ‘assures them, that they may depend on his hearty concurrence in every measure which can tend to secure the true principles of the constitution.’

(18) See b. iii. c. 9. Note, N° 49.

F f

‘supplies;

‘ *supplies ; may vote with or against a popular*
 ‘ *or unpopular administration ; but upon con-*
 ‘ *siderations far more interesting and import-*
 ‘ *ant. They are the guardians of the Eng-*
 ‘ *lish constitution ; the makers, repealers, and*
 ‘ *interpreters of the English laws, delegated to*
 ‘ *watch, to check, and to avert every dan-*
 ‘ *gerous innovation ; to propose, to adopt, and*
 ‘ *to cherish any solid and well-weighed im-*
 ‘ *provement (19).’*

To conclude in the words of the same ad-
 mirable writer : ‘ The protection of the LI-
 ‘ BERTY OF BRITAIN is a duty which they
 ‘ owe to themselves, who enjoy it ; to their
 ‘ ancestors, who transmitted it down ; and to
 ‘ their posterity, who will claim at their hands
 ‘ this the best birthright, and noblest inheri-
 ‘ tance of mankind.’

(19) BLACK. Com. Introd. f. i. p. 9.

N O T E S.

NOTE [A], page 2.

DEAN TUCKER, in one of his *Four Letters on Important Subjects* (1), says, "That some person descended from noble ancestors, and himself in many respects an ornament to his country, is so much infected with the republican malady of the present times, as to have declared, that, if *we must have a k—g, he should prefer the present to any other; but he does not see what need there is to have any k—g at all.*" The like observation was formerly made during the last pangs of the constitution; I mean soon after the murder of king Charles I. when, on debating the question concerning the abolition of monarchy, Martin, a zealous republican, confessed, that, *if a king was desired, the last was as proper as any gentleman in England* (2).

NOTE [B], p. 17.

IN *Stuart's View of Society in Europe* (3), we are informed, "the duke of Normandy did not *first* introduce fiefs" (feoda, feuds, or fees) "into England, but only the *last step* of their progress, the invention of the *knight's-fee*, or the

(1) Page 40.

(2) WALKER's Hist. of Indepen. part 2d.

(3) Page 85. 104.

“tenure by *knight's-service* (4).” A knight's-fee was a certain portion of land, in respect whereof was to be furnished one knight (*miles*) or soldier (5), a term which Sir WILLIAM BLACKSTONE and DU CANGE (6) use as synonymous with freeman, and means perhaps, speaking in the plural number, those *legales homines* we often find mentioned in judicial proceedings. The institution of knight's-service was at first thought to be advantageous for both parties; and it had therefore the sanction of a national council (7). In favour of the people, the benefices of the Anglo-Saxon princes, which were not then held in perpetuity, were to become hereditary *fees*. A powerful army was to be established for the mutual protection and defence of the sovereign and the subject (8).

As this, however, opened a wide door for servile dependence on the one hand, and tyranny on the other, it may not perhaps be disagreeable or unuseful to a reader of ancient history, to see, by what gradations all the other services and burthens concomitant upon this tenure, grew, as it were, out of this single one. “1. In the first place, to perform *homage*, and to swear fidelity to the patron, could not reasonably be denied,—as this was no more than a proper bond or security, that the Baron would duly perform the service which was required of him, in return for the favours which had been conferred upon him.—Such oaths

(4) BLACK. Com. b. ii. c. 2. p. 49. 51. 73. WHITAKER'S Hist. of Manchester, p. 261.

(5) STUART'S View of Society, p. 85. 107.

(6) BLACK. Com. b. ii. c. 2. p. 60. DU CANGE Glossar. Voc. Miles. ROBERTSON'S Hist. Charles V. vol. i. p. 17.

(7) STUART'S View of Society, p. 104. BLACK. Com. b. ii. c. 4. p. 48 & 50. Dr. SQUIRE on the Anglo-Saxon Government, p. 141.

(8) STUART'S View of Society, p. 104. STUART'S Historical Dissert. p. 122. Dr. SQUIRE on the Anglo-Saxon Government, p. 121. 140.

“ of fidelity had always been demanded and taken, when
 “ the Thane was first admitted into the family of his lord;
 “ nor could there be any solid objection offered against its
 “ being renewed upon the actual collation to a benefice.
 “ 2. Upon the death of the feudatory,—if he had a son, who
 “ was of proper age to succeed him, and capable of perform-
 “ ing the service appendant to the lands and honours which
 “ he was about to enjoy, surely it was highly reasonable and
 “ expedient, that he, likewise, should oblige his conscience
 “ to be faithful to his benefactor; nor could he surely think
 “ it hard and unjust, if his lord should demand, and insist
 “ upon being paid, some sort of acknowledgment in money,
 “ a proper fine or *relief*, before he once more parted with
 “ his right, as it were, and granted him the investiture,
 “ which was expected from him. 3. Were all the chil-
 “ dren under age upon the death of the feudatory? Who
 “ was so fit to have the management of the fee, to receive
 “ and dispose of the rents, profits, and emoluments of it, as
 “ he who still remained the superior lord of the soil, and
 “ who, during the minority of the heir, was deprived of
 “ his military service and attendants? Was there any per-
 “ son so proper to have the care and *wardship* of the children,
 “ as well as estate, and to see them suitably educated, as he
 “ who had so great an interest in their valour, honour,
 “ and integrity? 4. Upon the same account, likewise, if
 “ the next heir to the fee was a female, was it not the duty
 “ of the lord, to see that she was well disposed of in *marriage*
 “ to a man, who should be both able and willing to perform
 “ the military service which was required of him, and which
 “ was due from the fee? If a male, how could he excuse
 “ himself to his dependent, from not advising, assisting, and
 “ persuading him in the proper choice of a wife? 5. Was
 “ the lord, in any signal distress, taken captive in war, or ob-
 “ noxious to his creditors? Was he to match his eldest
 “ daughter into some noble house? To make the future
 “ hopes of his family (his eldest son) a knight, that is, to
 “ manumit

“ manumit him, as it were, out of his own power, and to
 “ make him a free and independent member of the commu-
 “ nity? To enter him into the service of his country, and esta-
 “ blish him a new family? or to be at any other extraordinary
 “ expence? To whom should he apply for pecuniary *aid* and
 “ assistance, but to those, who had sworn to serve him on
 “ all occasions, wherein their help was really wanted; to his
 “ own beneficiaries; to those, who had so great obligations
 “ to him and his family, and were therefore bound, as it
 “ were, in honour, as well as duty, to support it in all its
 “ grandeur? 6. Was the feudatory opulent, lazy, or
 “ otherwise engaged? or did his function render it improper
 “ for him to serve his lord personally in his wars? Nothing
 “ could be more just, than that he should either find proper
 “ persons to perform the necessary service in his stead, or, at
 “ least, to pay an equitable *scutage*, or commutation in
 “ money. 7. Finally, if the feudatory became rebellious to
 “ his lord, and, without sufficient reason, refused to comply
 “ with the condition upon which his fee was at first granted
 “ him; if he had defiled the purer course of his blood, by
 “ being found guilty of treason to his country; or, lastly,
 “ if his family became extinct, what law could be more
 “ equitable, than that the fee should *escheat*, or revert to the
 “ original donor, or his descendants.”

“ These seven were the most usual attendants, or conco-
 “ mitants of military tenure (9).”

But what was meant for the reciprocal interest of both
 parties, soon caused the greatest discontent and misfortunes.
 Personal military service was turned into pecuniary assig-
 nments. Immediately all the advantages (either promised or
 real) of the feudal constitution were destroyed, and nothing
 but the hardships remained (10). Cordiality between the
 lord and the vassal no longer subsisted. The tenant, instead
 of submitting patiently, and in some respects cheerfully, to

(9) Dr. SQUIRE on the Anglo-Saxon Gov. p. 148.

(10) BLACK. Com. b. ii. c. 5. p. 75.

aids, relief, primerseisin, fines for alienation, and escheat, was jealous, distrustful, and dissatisfied. The prince, on the other hand, exacted them with rigour. The rights of *wardship* and *marriage*, which ought to have been exercised only for the benefit of the infant heir, were scandalously prostituted and sold. No refinement or finesse in short was left unpractised that could be made to bring in money. Sir WILLIAM BLACKSTONE (11) draws a melancholy picture of those proceedings. ‘ Besides,’ says he, ‘ the scutages the feodatories were liable to in defect of personal attendance, which however were assessed by themselves in parliament, they might be called upon by the king or lord paramount for *aids*, whenever his eldest son was to be knighted, or his eldest daughter married; not to forget the ransom of his own person. The heir, on the death of his ancestor, if of full age, was plundered of the first emoluments arising from his inheritance, by way of *relief* and *primerseisin*, and, if under age, of the whole of his estate during infancy. And then, as Sir THOMAS SMITH (12) very feelingly complains, “ when he came to his own, after he was out of *wardship*, his woods decayed, houses fallen down, stock wasted and gone, lands let forth and ploughed to be barren,” to make amends, he was yet to pay half a year’s profits as a fine for suing out his *livery*; and also the price or value of his *marriage* if he refused such wife as his lord and guardian had bartered for, and imposed upon him; or twice that value if he married another woman. Add to this the untimely and expensive honour of *knighthood*, to make his poverty more completely splendid. And when, by these deductions, his fortune was so shattered and ruined, that perhaps he was obliged to sell his patrimony, he had not even that poor privilege allowed him, without paying an exorbitant fine for a *licence of alienation*.

(11) BLACK. Com. b. ii. c. 5. p. 76.

(12) Commonwealth, b. iii. c. 5.

' A slavery so complicated, and so extensive as this, called aloud for a remedy in a nation that boasted of her freedom.' For a century and an half accordingly, in every reign, a restitution of the laws of Edward the confessor, or the ancient *Saxon* system, was demanded; but it was demanded in vain (13). If a promise was obtained, it was sure to be evaded: until at last the burden became so intolerable, it could be no longer endured; and king John was forced to grant *Magna Charta*. But the decisive blow to the fruits, as they were called of the feudal tenures, was not given until the reign of Charles II. when the parliament took care, by an act in the very first year of the Restoration, to wit, the statute of the 12th of Charles II, c. xxiv. effectually to terminate them.

NOTE [C], p. 19.

THE following titles of the Chapters of the great charter of Henry III. with which RUFFHEAD's Collection of the Statutes begins, will sufficiently shew the reference that noble monument of antiquity had to those feudal severities, which had for ages made a restoration of the ancient *Saxon* government so desirable.

- CHAP. 1. A confirmation of liberties.
2. The relief of the king's tenant of full age.
 3. The wardship of an heir within age. The heir a knight.
 4. No waste shall be made by a guardian in ward's lands,
 5. Guardians shall maintain the inheritance of their wards; and of bishopricks, &c.
 6. Heirs shall be married without disparagement.
 7. A widow shall have her marriage inheritance and quarentine. The king's widow, &c.

(13) BLACK. Com. b. ii. c. 4. p. 52. STUART's View of Society, p. 102. HUME's Hist. Eng. vol. i. p. 185.

CHAP,

CHAP. 8. How sureties shall be charged to the king.

9. The liberties of London, and other cities and towns confirmed.
10. None shall distrain for more service than is due.
11. Common Pleas shall not follow the king's court.
12. Where and before whom assises shall be taken. Adjournment for difficulty.
13. Assises of *Darrein presentment*.
14. How men of all sorts shall be amerced, and by whom.
15. Making of bridges and banks.
16. Defending of banks.
17. Holding pleas of the crown.
18. The king's debtor dying, the king shall be first paid.
19. Purveyance for a castle.
20. Doing of castleward.
21. Taking of horses, carts, and wood.
22. How long felons lands shall be holden by the king.
23. In what places wears shall be put down.
24. In what case a *præcipe in capite* is not grantable.
25. There shall be but one measure throughout the realm.
26. Inquisition of life and member.
27. Tenure of the king in socage, and of another by knight's service petit serjeanty.
28. Wager of law shall not be without witness.
29. None shall be condemned without trial. Justice shall not be sold or deferred.
30. Merchant strangers coming into this realm shall be well used.

CHAP.

- CHAP. 31. Tenure of a barony coming into the king's hands by escheat.
32. Lands shall not be aliened to the prejudice of the lord's service.
33. Patrons of abbies shall have the custody of them in the time of vacation.
34. In what only case a woman shall have an appeal of death.
35. At what time shall be kept a county court, sheriff's turn, and a leet.
36. No lands shall be given in mortmain.
37. A subsidy in respect of this charter, and the charter of the forest, granted to the king.

For an explication of these several heads, or rather the heads of the Charter of King John, see HENRY's Hist. of Gr. Br. b. iii. c. 3. f. 2.

NOTE [D], p. 20. See NOTE [QQQ].

NOTE [E], p. 20.

‘ BY this expression, trials by ordeals, by judicial combats, and by compurgators, are probably intended, as they were all in use at this time, and agreeable to law (14).’

NOTE [F], p. 20.

‘ GREAT fines were paid formerly by prodigious numbers of people, in order to obtain justice, and that they might be allowed the benefit of a legal trial; while others gave great gifts to procure the royal interposition for preventing law-proceedings against them; and not a

(14) HENRY's Hist. Gr. Br. b. iii. c. 3. f. 2.

‘ few agreed to give one half, or one third, or one fourth
‘ part of their lawful debts to the king, that they might pro-
‘ cure payment by his authority (15).’

N O T E [G], p. 22.

‘ **W**E hear it generally said, that justice ought to be
‘ administered with us as in Turkey. Is it possible,
‘ then, that the most ignorant of all nations should be the
‘ most clear-sighted in a point that it most behoves man-
‘ kind to know?

‘ If we examine the set forms of justice in respect to the
‘ trouble the subject undergoes in recovering his property,
‘ or in obtaining satisfaction for an injury or affront, we
‘ shall find them, doubtless, too many : but if we consider
‘ them in the relation they have to the liberty and security
‘ of the subject, we shall often find them too few ; and we
‘ shall be convinced, that the trouble, expence, delays,
‘ and even the very dangers of our judiciary proceedings,
‘ are the price that every subject pays for his liberty (16).’

N O T E [H], p. 28.

SCUTAGE, or escuage, was a pecuniary commutation
for personal military service. *Aids* were also an inci-
dent of the feudal tenures ; given at the first as mere be-
nevolences by the vassals to the lord when his son was to
be knighted, when his daughter was to be married, and
when his person was to be ransomed ; but they afterwards
became arbitrarily exacted on other occasions, to pay
the lord's debts, &c. ; and laid the foundation of the pre-
sent land-tax ; but, at the same time, they laid the founda-
tion of the present legislature. When, through the de-

(15) HENRY's Hist. of Gr. Br. b. iii. c. 3. f. 1. MADDOX,
Hist. Excheq. c. xii.

(16) Sp. L. b. vi. c. 2.

-cline of the strict feudal system, the personal attendance of the vassal was turned into a pecuniary satisfaction; the king's feudal emoluments became less, and the exigencies of government increased, a land-tax became inevitable; but to smooth over the prejudices against its first of all (to say nothing of king John's great charter, which ordained, that no aids should be taken by the king without the consent of parliament (17), or of the charter granted by Henry III. which enacted, that 'escuage should, ' from thenceforth, be taken like as it had been wont to be ' in the time of his grandfather), the monarch assured the people, by a public law (18), that these particular calls should not be drawn into a general precedent; and, to make them still more palatable, it was enacted by 25 Edw. I. c. 6. that 'no manner of aids, tasks, nor prizes, should be ' taken but by the common assent of the realm, and for the ' common profit thereof, saving the ancient aids and prizes ' then due and accustomed;' and by the stat. 34 Edward I. c. i. it was enacted, that 'no tallage or aid should be taken ' or levied, without the good-will and assent of archbishops, ' bishops, earls, barons, knights, burgesses, and other ' freemen of the land;' which, as will be shewn hereafter, laid a firm foundation for those liberties which were afterwards derived from a popular representation (19).

N O T E [I], p. 32.

' **T**HROUGHOUT the reign of Edw. I. the assent of ' the commons is not once *expressed* in any of the enacting clauses, nor in any of the reigns ensuing, till the ' 9th of Edw. III. nor in any of the enacting clauses of ' 16 Rich. II.; nay, even so low as Hen. VI. from

(17) BLACK. Com. b. ii. c. 5. p. 64.

(18) 25 Edward I. c. 5.

(19) See DALRYMP. Hist. of Feod. Prop. c. ii. § 3.; and RUFF. Pref. to Stat. at Large, p. 10.

‘ the beginning, till the eighth year of his reign, the
 ‘ assent of the commons is not once expressed in any en-
 ‘ acting clause (20). While the feudal system which
 ‘ William the Norman introduced, or rather, perhaps,
 ‘ extended, was preserved in its full vigour (21), we find
 ‘ no *express* mention of the commons.’

NOTE [K], p. 36.

HURD’s Mor. and Pol. Dial. p. 309. RAPIN says,
 ‘ the barons, who were so many petty princes, being
 ‘ divided in the civil war betwixt *Stephen, Maud,* and
 ‘ *Henry II.* each party treated those of the other side as
 ‘ rebels, which brought the possession of much land to the
 ‘ contending princes. And as each side had experienced
 ‘ the power of the barons over their vassals, and having,
 ‘ besides, many friends to remunerate, they split the *ba-*
 ‘ *ronies* into smaller *tenancies in chief*, who all held imme-
 ‘ diately of the Crown. Hence arose the distinctions of
 ‘ *fees of the old feoffments*, and *fees of the new*, and also of
 ‘ the greater and lesser barons. By granting thus *small fees*
 ‘ in the reigns of *Stephen, Henry II.* and king *John*, te-
 ‘ nants *in capite*, or barons, were so multiplied, that a very
 ‘ unequal representation of the kingdom arose, these *lesser*
 ‘ *barons* having an equal share in the legislature with the
 ‘ most potent. This grievance being grown to the great-
 ‘ est height, when king *John* was reduced to reason, there
 ‘ was a clause inserted in his *magna charta*, whereby all the
 ‘ *greater barons* were to be *severally* summoned to parliament,
 ‘ and the *lesser*, in *general*, by which means these last were
 ‘ excluded from sitting in parliament singly, and in person;
 ‘ but, however, the being summoned in general, gave them
 ‘ a right to do this as a community, and by *representation*;
 ‘ and as these lesser barons were co-ordinate in rank, the

(20) RUFF. Pref. to Stat. at Large, p. 7.

(21) Ibid. p. 10.

‘right of representing them naturally *devolved on such of their body* as the rest conferred it on. The persons so chosen, were called from the *tenure* of their lands, and from their representing the respective counties for which they served, *knights of the shire* (22).’ As I remember, Lord LYTTLETON, in his History of Henry II. vol. iii. satisfactorily proves, that all tenants *in capite*, were so far barons, as to have a right by the feudal law to sit in the king’s council. And Mr. RUFFHEAD, in his Preface to the Statutes at Large (23), informs us, that the inferior tenants *in capite* ‘were called the *lesser barons*.’

NOTE [L], p. 51.

‘IN most of the ancient statutes, the commons are not so much as named: and in several, even where they are mentioned, they are distinguished as *petitioners* merely, the *assent* of the lords, being expressed in contradistinction to the *request* of the commons (24).’ See 10 Edward III. ft. i. c. 2. the statutes of Richard II. throughout, the statutes of Richard III. throughout. See also Henry VII. where many of the statutes are said to be made by the *advice and assent* of the lords spiritual and temporal, and at the *supplication* of the commons; at other times at the *request*—sometimes the *prayer* of the commons.—‘After having provided for the king’s necessities, the commons took occasion to present petitions for the redress of grievances; from which petitions, most of our early statutes are framed (25).’

(22) RAPIN’s Hist. Eng. Dissert. on the Anglo-Sax. Gov. vol. ii. p. 176. 8vo edit. Note. ST. AMAND’s Essay on Legislative Power.

(23) P. 10.

(24) RUFF. Pref. to Stat. at Large, p. 12.

(25) Ibid.

NOTE [M], p. 52.

DE LOLME, Const. Eng. p. 41. In **RUFFHEAD's** Preface to the Statutes at Large (26), we read thus :
 * In the 51st of Edward III. we find an imposition laid
 * without the consent of the commons ; and the same king,
 * in the last year of his reign, tacitly reserves a right of
 * taxing them without their consent. For upon a petition,
 * praying, " That the prelates, earls, barons, commons,
 * citizens and burgesses of England, be not thenceforth
 * charged, &c. but by common assent, &c. the king an-
 * swered, ' That he is not at all willing to do it, *without great*
 * *necessity*, and for defence of the realm, and *where HE MAY*
 * *do it with reason.*" Rot. Parl. 51 Edward III. num. 25.
 * In the first year of Richard II. money was raised with-
 * out assent of parliament. **MADDON's** M. S. No. 14.
 * tit. *Parl.* Two commissions were granted for the same
 * purpose in the 2d of Henry IV. without assent of parlia-
 * ment. See **COTTON's** Abridgm. p. 406. num. 22. In
 * 21 Richard II. assessments were made upon counties out
 * of parliament by the king's letters patent only. **MAD-**
 * **DOX**, M. S. No. 12. tit. *Parl.*—As a proof that acts
 * were often passed without their concurrence or assent,
 * we find, in 6 Richard II. an act made in the last parlia-
 * ment revoked, and the cause assigned is, because the said
 * statute was *never assented to*, nor granted by the com-
 * mons. It is observable, nevertheless, that the act of the
 * 6 Richard II. was never printed, as Lord **COKE** assures
 * us, and the statute of the 5th, *though passed without the*
 * *assent of the commons*, was, as it is said, put in execution,
 * and continued in force till it was repealed by 1 Edw. VI.
 * c. 12. and 1 Elizabeth, c. 1. See Rot. Parl. 6 Rich. II.
 * Nu. 52. And see **COTTON's** Abr. p. 354. where there are
 * several instances of acts passed without the assent of the
 * commons.—So much for the commons *granting taxes*.

As to *making laws*, RUFFHEAD, in his Pref. to the Stat. (27), tells us, that ‘ the legislative right of the commons was so little regarded in practice, that the 2d of Henry IV. c. 13. was passed, though the commons never assented to it, but, on the contrary, disavowed it. The force of that act, nevertheless, was felt till the reigns of Henry VIII. and Edward VI. Nay, afterwards, in Mary’s time, till its final repeal in the reign of Q. Elizabeth. Instances of this kind, probably, gave birth to the petition in the 8th of Henry IV. when “ it was enacted, at the request of the commons, that certain of the commons house should be present at the ingrossing of the parliament roll.” But, notwithstanding these securities, acts still continued to be passed without the commons assent: and they were, from time to time, compelled to renew their claim of right to *assent* as well as *petition*, which they did in 2 Henry V. in very strong terms;’ which are set forth by RUFFHEAD.

NOTE [N], p. 52.

LORD CLARENDON, in his History of the Rebellion (28), speaking of the impeachment of the earl of Middlesex, expresses himself to this effect: ‘ James I. knew well enough the ill consequences that must attend such a measure; and that it would *shake his own authority in the choice of his own ministers*, when they should find that their security did not depend solely upon his own protection; which breach upon his kingly power was so much without a precedent (except one unhappy one made three years before, to gratify likewise a private displeasure), that the like had not been practised, in very many years.’

NOTE [O], p. 55.

ACTS of parliament were not originally drawn up by the estates of parliament themselves, and regularly read to them a certain number of times before they were assented to; but each of the orders of the realm, having finished the king's business, for which they were immediately convened, afterwards presented their own resolutions separately to the sovereign in a series of petitions, praying him to give them satisfaction in what they humbly demanded of him. Such articles of these petitions as were approved of, and assented to by the king, were afterwards reduced into the form of statutes by his own lawyers and counsel, and published under his sole authority. But this manner of proceeding being liable to be much abused, as it yielded a favourable opportunity to the framers of these laws, to give them a quite different turn from what they were originally intended to have—this drew on a petition from the commons, in the beginning of Henry V.'s reign, desiring this prince, "that from this time forward, by complaint of the commons of any mischief, asking remedy by the mouth of their speaker for the commons, rather else by the petition written, that there never be no law made thereupon, and engrossed as statute, and law, neither by additions, neither by diminutions, by no manner of term, ne termes, the which should change the sentence, and the intent asked by the speaker mouth, or the petition by foresaid yeven up in writing by the manner foresaid, without assent of the foresaid commons, &c."—To this petition the king's answer was, "that he of his grace especial graunteth, that from henceforth, nothing be enacted to the petition of his comun, that be contrary of her asking, that they shulde be bound without their assent, &c. (29)."

(29) BRADY'S Answer to Petit. p. 85.

NOTE [P], p. 66.

THE Dean of GLOUCESTER, in his *Treatise on Civil Government* (30), seems to conceive the reason of the difference between the state of representation of the boroughs in the two counties of *Wills* and *Cornwall*, when compared with those of other counties, to be this: '*Wiltshire* was long the residence of the kings of the *West Saxons*, who, in process of time, conquered all the rest. Now, where the royal residence was, there of course would be the chief domain: for the stated revenue of our ancient princes, both *Saxon* and *Norman*, consisted chiefly in landed estates, that is, in castles, with their territories, manors, and honours, and towns and villages, held by various services, some of them military or noble, and others base and servile. *Cornwall* was, in like manner, and for the same ends and purposes, the domains of the earls and dukes of *Cornwall*. Hence, therefore, it naturally followed, that as the great tenants of the Crown were obliged to attend *in person* at the courts of their sovereign [thereby constituting an house of peers], so the smaller tenants, and inferior vassals, were to do the same by deputation: which circumstance gave the first idea of an house of commons [see p. 43.] Indeed there was a stronger reason for the attendance of the deputies from those towns and villages which belonged to the Crown, if their poverty did not prevent them; I say, there was a stronger reason for their attendance in some respects, than for that of others; because the *quantum* of those acknowledgments, services, and quit-rents, which they were to pay to their great landlord, the Crown, as well as their free gifts and benevolences, if they were disposed to make any, were to be fixed and apportioned at such meeting. Moreover, when the duchy of *Cornwall* escheated to the king, the tenants, and borough-towns, and villages of

the duke became a part of the royal patrimony; in consequence of which, they were obliged to do the same suits and services at the king's courts, which they had done before to their ducal masters, or great feudal lords.— See, in his Treatise, p. 296, the distinction made between the dutchy of *Cornwall* and the dutchy of *Lancaster*.

NOTE [Q], p. 79.

IN former periods of the English government, the house of commons was of so small weight in the balance of the constitution, that little attention had been given, either by the Crown, the people, or the house itself, to the choice and continuance of the members. It had been usual, after parliaments were prolonged beyond one session, for the chancellor to exert a discretionary authority, of issuing new writs to supply the place of any members, whom he judged incapable of attending, either on account of their employment, their sickness, or other impediment. This practice gave that minister, and consequently the prince, an unlimited power of garbling at pleasure the representatives of the nation; yet so little jealousy had it created, that the commons of themselves, without any court influence or intrigue, and contrary to some former votes of their own, confirmed it in the twenty-third of Elizabeth (Journ. Jan. 19, 1580.) At that time, though some members, whose place had been supplied on account of sickness, having now recovered their health, appeared in the house, and claimed their seat; such was the authority of the chancellor, that, merely out of respect to him, his sentence was adhered to, and the new members were continued in their places. Here a most dangerous prerogative was conferred on the Crown: but to shew the genius of that age, or rather the channels in which power then ran, the Crown put very little value on this authority; insomuch, that two days afterwards, the chancellor of himself resigned it back to

‘ the commons, and gave them power to judge of a particular vacancy in their house. And when the question, concerning the chancellor’s new writs, was again brought on the carpet towards the end of the session, the commons were so little terrified at the precedent, that though they re-admitted some old members, whose seats had been vacated, on account of slight indispositions, yet they confirmed the chancellor’s sentence, in instances where the distemper appeared to have been dangerous and incurable. Nor did they proceed any farther, in vindication of their privileges, than to vote, *that during the sitting of parliament, there do not, at any time, any writ go out for the abusing or returning any member without the warrant of the house* (31).’

NOTE [R], p. 79.

HUME (32) tells us, that the *first* business in which the commons were engaged in the reign of James I. was about their privileges.

Mrs. MACAULAY, in her History of England (33), thus expresses herself: ‘ After a recognition of the king’s title, the *first* motion of the commons was for *the redress of grievances.*’ And this, although Mr. HUME tell us (34), James left almost all the chief offices in the hands of Elizabeth’s ministers, and trusted the conduct of political concerns, both foreign and domestic, to his English subjects.’ And Mrs. MACAULAY, in the page in her History we have quoted, adds this note: ‘ In this conference [a conference between the lords and commons] was flung out an extraordinary argument for this time; “ That a people may be without a king, a king cannot be

(31) HUME’s Hist. of Eng. vol. vi. p. 15. (32) *Ibid.*

(33) MACAULAY’s Hist. Eng. vol. . p. 11.

(34) HUME’s Hist. Eng. vol. vi. p. 15. Note [O].

"without a people (35);" which expression sufficiently shews the power that had devolved on the house of commons, and how, upon the first opportunity, it began to shew itself.

N O T E {S}, p. 80.

THE important sum granted by his first parliament, called as soon as might be after his accession, and before there could be any misunderstanding between them, to carry on a war of their own recommending, against most mighty potentates; though they knew all the money formerly granted was expended, and the king was loaded with a large debt contracted by his father, was 112,000*l.* (36). The whole revenue of Charles I. including not only the hereditary royal revenues, but also the sums granted by parliament for the pay of the navy and army, and all other public expences, did not amount to more than 800,000*l.* (37), a mere trifle compared to (a sum not much more than sufficient now to pay the INTEREST of) the sum of 12,000,000*l.* which, so long ago as the year 1776, was obliged to be raised every year upon the nation; exclusive of tithes, county rates, and the taxes which support the poor (38). But it seems, in the time of Charles I. the house of commons was governed by a set of men of uncommon capacity, 'who were formed into a regular party:' and '*they needed but little instruction or rhetoric to recommend to them practices which increased their own importance* (39).'

Lord Salisbury, it seems, computed, that the supplies granted to Q. Elizabeth, *during a reign of forty-five years,*

(35) Journ. Dom. Com. vol. i. p. 156.

(36) HUME's Hist. Gr. Br. vol. vi. p. 201.

(37) Com. Journ. 4th Sept. 1660. BLACK. Com. b. i. c. 8. p. 331.

(38) Dr. PRICE's Observ. on Civ. Lib. p. 124. Additional Observ. p. 170.

(39) HUME's Hist. of Gr. Br. vol. vi. p. 204. 213.

amounted only to 2,300,000*l* (40). Mr. Hume, in his History of England, App. vol. v. p. 475, says, 'that three millions would not, probably, be much wide of the truth.'

NOTE [T], p. 95.

'WHEN once an army is established, it ought not to depend immediately on the legislative, but on the executive power; and this from the very nature of the thing; its business consisting more in action than in deliberation.

'From a manner of thinking that prevails amongst mankind, they set a higher value upon courage than timorousness, on activity than prudence, on strength than counsel. Hence, the army will ever despise a senate, and respect their own officers. They will naturally slight the orders sent them by a body of men, whom they look upon as cowards, and therefore unworthy to command them. So that as soon as the army depends on the legislative body, the government becomes a military one; and if the contrary has ever happened, it has been owing to some extraordinary circumstances. It is because the army was always kept divided; it is because it was composed of several bodies, that depended each on their particular provinces; it is because the capital towns were strong places, defended by their natural situation, and not garrisoned with regular troops. Holland, for instance, is still safer than Venice; she might drown or starve the revolted troops; for as they are not quartered in towns capable of furnishing them with necessary subsistence, this subsistence is of course precarious (41).'

(40) FRANKLIN, p. 49.

(41) Sp. L. b. xi. c. 6.

NOTE [U], p. 96.

ALTHOUGH I have taken no notice of the religious controversies of those days, I mean not to be understood, but that they might have had *some* influence on the proceedings of the times. Some historians, I know, instead of attributing the misfortunes in the reign of Charles I. to a difference of opinion in *politics*, conceive them to have arisen chiefly, if not entirely, in England as well as Scotland, from disputes about matters of religion; from a difference of opinion respecting the hierarchy, or episcopal government; the using of the surplice; the placing of rails about the altar; bowing on approaching it; establishing a liturgy; the allowing recreations on Sundays; wearing embroidered copes, and lawn sleeves; and using the ring in marriage, and the cross in baptism. But, surely, the subject has, in general, been little understood. Tainted with the prejudices of party, the same passions or principles have generally had in view the same object; and few have had candour sufficient to acknowledge, that the consequence of the attainment of the object of either party, in the manner the violence of each made them look for, must have been the certain loss of liberty. Lord CLARENDON, however, waving idle speculations, and sticking to the material transactions of the times, particularly the controversial writings between the king and the house of commons, has furnished posterity with evidence to judge what were the real merits or mischiefs naturally attendant on the different views of party. From a careful examination of these materials, it appears clearly, that, until the latter end of the reign of Charles I. on the part of the king, and afterwards, and indeed before also, on the part of the parliament, such political errors prevailed, as, independent of any religious controversies, must infallibly have destroyed the constitution. It is, therefore, wholly on that ground I have considered the subject; and passed over entirely, 'those disagreements

‘ of the clergy,—which it would be as impracticable to decide, by attending to their affected subtilties, as it would be to abolish duels, by erecting a court, with a delegation to trace a point of honour through all its refinements(42).’

N O T E [V], p. 103.

THIS is not indeed much to be wondered at, when we are told, that the ‘ *very being* of the house of commons depends on their power of granting subsidies to the Crown (43).’

Another remarkable alteration has happened, in regard to the taxation of the clergy. Formerly they used to tax themselves, as a separate body, in convocation; but soon after the restoration of Charles II. they were taxed by the same authority as the rest of the people. And, what is as remarkable, this very important alteration in the state of the kingdom, was made by connivance, and without any *particular express law for the purpose*; and notwithstanding an attempt had been formerly made in convocation in the reign of Edward VI. after the reformation of religion, to have the lower house of convocation united to the house of commons, *according to ancient custom, sicut ab antiquo fieri consuevit*; and a like proposal had been made to queen Elizabeth; and both had been rejected (44).

The parliament, in the time of Charles I. towards the very beginning of their usurpation, were however well aware of the value of the privilege of taxing themselves. Having raised an army to establish, not the *liberty of the subject*, nor the *liberty of the constitution*, but (as appears clearly from

(42) MONTESQUIEU on the Rise and Fall of the Roman Empire, p. 296.

(43) DE LOLME, Const. Eng. b. i. c. 8. note

(44) Lord LYTT. Hist. Henry II. vol. ii. p. 232. HODGKIN'S Hist. of Convocations, p. 429, 430. Append. to BURNET'S Hist. of the Reformation, No. 18.

the several evasive answers of the parliament to the king's message of the 20th of January 1641, and the nineteen propositions at last presented to the king on the 2d June 1642) the whole *power of government* in themselves, they were not contented with levying a rate unprecedented in the quantum of it; in the arbitrary manner by which each person's share of it was to be ascertained, and in the severities by which the payment of every proportion was to be enforced; but they ordained (which ought at once to have discovered *power*, and not *liberty*, was the principle they were governed by) that they should contribute towards the public burthen only *what they themselves thought proper*. That their power, in this respect as well as others, might be as absolute as could be, *they were to be taxed truly by none but themselves* (45).

NOTE [W], p. 109.

‘THE grandeur of Rome,’ says LORD BOLINGBROKE;
 ‘was the work of many centuries, the effect of much
 ‘wisdom, and the price of much blood. She maintained
 ‘her grandeur while she preserved her *virtue*. But when
 ‘luxury grew up to favour *corruption*, and corruption to
 ‘nourish luxury, then *Rome* grew venal, the election of her
 ‘magistrates, the sentences of her judges, the *decrees of her*
 ‘*senate*, all were sold; and her liberty was sold when these
 ‘were sold; and her riches, her honour, her glory, could
 ‘not long survive her liberty. She who had been the
 ‘envy, as well as the mistress of nations, fell to be the ob-
 ‘ject of their scorn or their pity. They had seen and felt
 ‘that she governed other people by will, and her own, by
 ‘law. They beheld her governed herself by will; by the
 ‘arbitrary will of the worst of her own citizens, of the
 ‘worst of both sexes, of the worst of human kind; by
 ‘*Caligula*, by *Claudius*, by *Nero*, by *Messalina*, by *Agrippina*,

(45) Lord CLAR. Hist. Rebel. vol. ii. b. vi. p. 77.

by

by *Peppan*, by *Narcissus*, by *Calistus*, by *Pallas*, by princes that were stupid or mad; by women that were abandoned to ambition and to lust, by ministers that were consipated slaves, parasites, and panders insolent and rapacious.

So early as the times of the Gracchi, it was grown to be a general complaint, that no man who had money to give, could be brought to punishment (46). And Cicero says, that in his time, the same opinion was become settled and universally received (47).

NOTE [X], p. 119.

THE king indeed, at times, sends messages to either house: and nobody, I think, can wish that no means of intercourse should exist between him and his parliament. But these messages are always expressed in very general words; they are only made to desire the house to take certain subjects into their consideration; no particular articles or clauses are expressed; the commons are not to declare, at any settled time, any solemn acceptance or rejection of the proposition made by the king; and, in short, the house follows the same mode of proceeding, with respect to such messages, as they usually do in regard to petitions presented by private individuals. Some member makes a motion upon the subject expressed in the king's message; a bill is framed in the usual way; it may be dropped at every stage of it; and it is never the proposal of the crown, but the motion of some of their members, which the house discuss, and finally accept or reject (48).

(46) App. de Bell. Civ.

(47) Act. in Verr. i. c. 1. De LOLME Constit. Eng. b. ii. c. 16. p. 352. 4th edit.

(48) De LOLME Constit. Eng. b. ii. c. 4. p. 237. note.

NOTE [Y]. p. 124.

SIR WILLIAM BLACKSTONE, speaking of the prerogative of the crown with regard to foreign concerns, thus expresses himself. 'The king is the delegate or representative of his people. It is impossible that the individuals of a state in their collective capacity, can transact the affairs of that state with another community equally numerous as themselves. *Unanimity* must be wanting to their measures, and *strength* to the execution of their councils. In the king therefore, as in a center, all the rays of his people are united, and form by that union a consistency, splendor, and power, that make him feared and respected by foreign potentates; who would scruple to enter into any engagement, that must afterwards be revised and ratified by a popular assembly (49).'

NOTE [Z]. p. 125.

THE ancient demesne, or land estate of the crown, as recorded in Doomſday Book by William I. consisted of 1422. manors in different counties, besides some scattered lands and farms, not comprehended therein, and quit-rents paid out of several other manors (50). And in the reign of Edward IV. we are told by respectable authority, that the wealth arising to the crown from its landed estate and casual profits, exclusive of subsidies and grants by parliament, was sometimes equal to *one fifth part of the lay property of the kingdom* (51). In four of the western counties the demesne lands exempted from taxes amounted to *one third*, and in the fifth, viz. Somersetshire, to *one fourth* of

(49) BLACK. Com. b. i. c. 7. p. 252.

(50) BRADY'S Hist. William I. p. 210. DAVENANT on Resumptions, 105. Lord LYTT. Hist. Hen. II. vol. iii. p. 237.

(51) FORTESCUE on absolute and limited Monarchy. Lord LYTT. Hist. Henry II. vol. iii. p. 459, note.

the wholeland (52). 'Most of the chief cities of the kingdom,' we are told, 'were formerly in the hands of the crown (53).' Order. Vital. (54) mentions William the Conqueror's income to amount to a sum, which Mr. HUME computes to be equivalent, in the present time, to nine or ten millions a year (55). And, strange as it may now seem, it was certainly formerly thought to be perfectly constitutional, to make the crown quite independent of the parliament with regard to the ordinary supplies. LORD LYTTTELTON, in his History of Henry II. vol. iii. p. 456. cites one of the articles exhibited in parliament against king Richard II. and observes, in this remarkable article is very clearly set forth the whole policy of our ancestors, with regard to the different provisions they made for the crown. *Its support, in time of peace, was the patrimony belonging to it and the revenue of the kingdom.* The celebrated Lord Chief Justice FORTESCUE, who wrote in the reign of Henry VI. in his Treatise on absolute and limited Monarchy, gives many weighty arguments to shew the mischiefs that may ensue to any realm from the poverty of its prince (56). Lord Chief Justice COKE seems to have been of the same opinion. In his Fourth Inst. c. i. entitled *Advice concerning new and plausible Projects and Offers in Parliament* (57), he speaks thus: 'When any plausible project is made in parliament to draw the lords and commons to assent to any act (especially in matters of weight and importance), if both houses do give upon the matter projected, and promised their consent, it shall be most necessary, they being trusted for the common-wealth, to have the matter projected and promised (which moved the houses to

(52) Lord LYTT. Hist. Henry. II. vol. iii. p. 469.

(53) HUME's Hist. Eng. vol. ii. p. 125. Append.

(54) Order. Vital. p. 523.

(55) HUME's Hist. Eng. vol. i. c. 4. p. 277.

(56) Lord LYTT. Hist. Henry II. vol. iii. p. 464.

(57) Page 44

' consent) to be established in the same act, lest the benefit
 ' of the act be taken, and the matter projected and promised
 ' never performed, and so the houses of parliament perform
 ' not the trust reposed in them, as it fell out (taking one
 ' example for many) in the reign of Henry VIII. On the
 ' king's behalf, the members of both houses were informed
 ' in parliament, that no king or kingdom was safe but where
 ' the king had three abilities: 1. *To live of his own, and*
 ' *able to defend his kingdom upon any sudden invasion or insur-*
 ' *rection.* 2. *To aid his confederates, otherwise they would*
 ' *never assist him.* 3. *To reward his well-deserving servants.*
 ' Now the project was, that if the parliament would give unto
 ' him all the abbies, priories, friories, nunneries, and other
 ' monasteries, that, for ever in time then to come, he would
 ' take order that the same should not be converted to private
 ' uses: but first, that his exchequer for the purposes afore-
 ' said should be enriched: secondly, the kingdom strength-
 ' ened by a continual maintenance of 40,000 well-trained
 ' soldiery, with skilful captains and commanders: thirdly,
 ' for the benefit and ease of the subject, who never after-
 ' wards (as was projected), in any time to come, should be
 ' charged with subsidies, fifteenths, loans, or other common
 ' aids: fourthly, lest the honour of the realm should receive
 ' any diminution of honour by the dissolution of the said mo-
 ' nasteries, there being twenty-nine lords of parliament of
 ' the abbots and priors (that held of the king *per baroniam*)
 ' *that the king would create a number of nobles.* The said
 ' monasteries were given to the king by authority of diverse
 ' acts of parliament, but no provision was therein made for
 ' the said project, or any part thereof (58). And Baron MON-
 ' TESQUIEU observes, ' It is as necessary that there should be
 ' means for the subsistence of a state, as that the state should
 ' have civil laws to regulate the disposal of property (59).'

(58) HUME'S Hist. Eng. vol. iv. p. 457. note I.

(59) Sp. L. b. xxvi. c. 16.

NOTE [AA]. p. 125.

THE fruits and consequences inseparably incident to the tenure in chivalry, were seven, viz. aids, relief, primer-seisin, wardship, marriage, fines for alienation, and escheats. Every one of these was calculated to bring money into the king's coffers. Lord LYTTELTON in his 3d vol. of the *History of the Life of King Henry II.* p. 242, says, that the king was not only, beyond comparison, the greatest landholder in England, but besides his demesnes, he had frequently in his possession, by *escheats*, *seisures*, or *forfeitures*, the lands of many of his vassals; that in his 17th year he had in his hands seven baronies, of which four belonged to earldoms; and in his thirty-first year he had eight baronies, belonging likewise to earldoms, the lands annexed to the office of constable of England, with twelve other baronies, or knights fees of great value. And in the same volume, p. 248, he mentions some instances of the great profit, as well as power, arising to the crown from the *wardship* and *marriage* of its vassals, cited from the Rolls by Mr. MADOX, in his *History of the Exchequer*, c. x. p. 221, 222, 223. 'In the 22d year of king Henry II.' says this author, 'Thomas de Colvil gave that prince an hundred marks to have the custody of the children of Roger Torpel and their land, until they came to their full age. In the 28th of that reign, Odo de Dammartin gave five hundred marks for the custody of the son and heir of Hugh the king's butler: and in the 29th, Celestia, late wife to Richard Fit-Colbern, gave 40s. that she might have her children in wardship with their land; and that she might not be married except to her own good-liking. It is probable she gave so small a sum, because the estate was not a great one. But the highest payments of this nature I meet with in the Rolls, till after the 31st year of Henry III. were made to that king by John Earl of Lincoln, and by Simon de Montfort; the former of these having given three thousand marks to have the mar-

riage of Richard de Clare, for the benefit of Matilda, his eldest daughter, and the latter ten thousand to have the custody of the lands and heir of Gilbert de Unfraville, until the heir's full age, with the heir's marriage, and with advowsons of churches, knights fees, and other pertinencies and escheats. Ten thousand marks, containing then as much silver in weight as twenty thousand pounds now, and the value of silver in those days being unquestionably more than five times the present value, this sum was equivalent to a payment of above an hundred thousand pounds made to the exchequer at this time. The length of the custody may perhaps have added to the price; but the estate must have been a vast one to answer such an advance; and I mention it as a proof of the great opulence of our nobles in the reign of Henry II. as well as to shew how large a revenue might arise to the crown from casualties of this sort.' And in p. 466 of the same volume, it is said, that Mr. MADOX's History of the Exchequer, p. 322; shews from the great Roll of the 2d of Henry III. that Geoffry de Mandeville gave double of the highest payment abovementioned, viz. twenty thousand marks, that he might have to wife Isabel countess of Gloucester, with all her lands and knights fees; a most enormous sum, considering the value of silver in those days. A court, which had such immense and lasting benefits to confer on those it favoured, must, as Lord LYTTLETON (same vol. p. 236) observes, have had many suitors among all ranks of men; perpetually solicitous to gain its goodwill, and, by consequence, ready to obey its orders.

NOTE [BB], p. 131.

IT could never be the intention of his present majesty, to pursue the most pernicious measures, against the sense of the incorrupt part of the legislature, and the wishes of the

‘ the public,’ if we may believe the following quotation,
 taken from a respectable author. ‘ In the late reigns, the
 ‘ produce of certain branches of the excise and customs, the
 ‘ post-office, the duty on wine licences, the revenues of the re-
 ‘ maining crown lands, the profits arising from courts of
 ‘ justice (which articles include all the hereditary revenues of
 ‘ the crown), and also a clear annuity of 120,000*l.* in money,
 ‘ were settled on the king for life, for the support of his ma-
 ‘ jesty’s household, and the honour and dignity of the crown.
 ‘ And, as the amount of these several branches was uncer-
 ‘ tain (though in the last reign they were computed to have
 ‘ sometimes raised almost a million), if they did not arise
 ‘ annually to 800,000*l.* the parliament engaged to make up
 ‘ the deficiency. But his present majesty having, soon after
 ‘ his accession, spontaneously signified his consent, that his
 ‘ own hereditary revenues might be so disposed of as might
 ‘ best conduce to the utility and satisfaction of the public,
 ‘ and having graciously accepted the limited sum of 800,000*l.*
 ‘ *per annum*, for the support of his civil list (and that also
 ‘ charged with three life annuities, to the Princess of
 ‘ Wales, the Duke of Cumberland, and the Princess
 ‘ Amalie, to the amount of 77,000*l.*) the said hereditary
 ‘ and other revenues are now carried into and made a part of
 ‘ the aggregate fund, and the aggregate fund is charged
 ‘ with the payment of the whole annuity to the crown of
 ‘ 800,000*l. per annum* (60). Hereby the revenues them-
 ‘ selves, being put under the same care and management as
 ‘ the other branches of the public patrimony, will produce
 ‘ more and be better collected than heretofore; and the
 ‘ public is a gainer of upwards of 100,000*l. per annum* by
 ‘ this disinterested bounty of his majesty (61).

(60) Stat. 1 George III. c. 1.

(61) BLACK. Com. b. i. c. 8. p. 335.

NOTE [CC], p. 151.

THE Yorkshire association I think, in their 1st Add. p. 11, state the grievance complained of to consist in this, ' that the scene of national glory is changed; with much of ' our foreign trade, our naval superiority is lost; our Ame- ' rican provinces are dismembered from the empire; and ' our ancient foes, aided by our once friendly ally, and en- ' couraged by almost every other European power, are ' proudly insulting over this wretched country: that at home, ' agriculture and manufactures decline, as the load of taxes ' and our public debts increase; and that the national sub- ' stance is wasting away by profusion.'

NOTE [DD], p. 160.

AND the Earl of CLARENDON informs us, that in the reign of Charles I. during the time of the long inter- mission of parliaments, when there was no obstruction to the executive power, the nation enjoyed the like kind of blessings; notwithstanding the many unconstitutional exactions contrived to raise money, and supply the place of parliament. The words of Lord CLARENDON (62) are, ' after some ' unquietness of the people, and unhappy assaults upon the ' prerogative by the parliament, which produced its dissolu- ' tion, and thereupon some froward and obstinate disturb- ' ances in trade; there quickly followed so excellent a com- ' posure throughout the whole kingdom, that the like peace ' and plenty, and universal tranquillity for ten years, was ' never enjoyed by any nation; and was the more visible ' and manifest in England, by the sharp and bloody war ' suddenly entered into between the two neighbour ' crowns, and the universal conflagration that, from the in- ' vasion of the Swedes, covered the whole empire of Ger- ' many.' In another part (63), he has these words: ' I

(62) Hist. Rebel. vol. i. p. 52.

(63) Ibid. p. 58.

‘ must be so just as to say, that, during the whole time that
 ‘ these pressures’ (the impositions laid by regal authority
 only) ‘ were exercised, and those new and extraordinary
 ‘ ways were run, that is, from the dissolution of the parliament
 ‘ in the fourth year to the beginning of this parliament,
 ‘ which was above twelve years ; this kingdom, and all his
 ‘ majesty’s dominions (of the interruptions in Scotland some-
 ‘ what is said in another place) enjoyed the greatest calm,
 ‘ and the fullest measure of felicity, that any people, in any
 ‘ age, for so long time together, have been blessed with ;
 ‘ to the wonder and envy of all the other parts of Christen-
 ‘ dom.’ In the very next page he says, ‘ trade increased to
 ‘ that degree, that we were the exchange of Christendom
 ‘ (the revenue from thence to the crown being almost double
 ‘ to what it had been in the best times), and the bullion of
 ‘ neighbour kingdoms was brought to receive a stamp from
 ‘ the mint of England ; foreign merchants looking upon
 ‘ nothing so much their own, as what they had laid up in
 ‘ the warehouses of this kingdom ; the royal navy, in num-
 ‘ ber and equipage, was much above former times, very for-
 ‘ midable at sea ; and the reputation of the greatness and
 ‘ power of the king, were much more with foreign princes
 ‘ than any of his progenitors.’ The king enjoyed *power* ;
 the nation, according to Lord CLARENDON (64), *liberty* ;
 that is, I suppose what we now understand by *civil liberty*,
 in the civil institutions which were then established. *Pol-
 itical liberty* the nation could not enjoy, because, having
 no parliament, it had not a political power of exercising its
legislative authority, in making either new *civil institutions* for
 the better guidance of the *subject*, or *political laws* for the
 better government of the *nation* ; neither had it a political power
 of exercising that *inquisitorial* authority which is so necessary
 for securing the *execution* of the laws, civil and political.

(64) Hist. Rebel. vol. i. p. 59.

NOTE [EE], p. 165.

THOUGH such an outcry has been made against Charles for his interference with the parliament, yet writers of different parties and persuasions agree, that Cromwell exceeded what, in the most exaggerated complaints, has in that respect been alledged against Charles (65). Charles, on an accusation of high treason by the attorney general, went to the house of commons to seize five members; Cromwell, without even a pretence of a crime, at one time ‘purged,’ as it was called, the house of commons of above two hundred members (66), afterwards expelled the remainder; and when he found a more free parliament necessary for the establishment of his usurpation, and, notwithstanding all his arts, still experienced how little it was countenanced, he placed guards at the door of the house of commons, and allowed none to enter but such as would acknowledge his authority; and subscribe an ‘engagement,’ not to propose or ‘consent to alter the government,’ as settled by him and his council of officers. The members of another parliament were not permitted to enter the house without signing an engagement to give no disturbance to the government, and having a *warrant from his council*. And by these means he was declared Protector.

Charles called into use some ancient prerogatives to raise money to maintain an army. By Cromwell ‘a constant yearly revenue was ordained to be raised for maintaining 10,000 horse, and 20,000 foot, with a convenient number of ships, besides 200,000 *l. per annum*, for defraying the charges of the administration of justice, and the other expences of government, which revenue was to be raised by the customs, and such other ways and means as should be

(65) HARRIS’S Life of Cromwell, p. 461.

(66) HUME’S Hist. Great Britain, vol. vii. c. 59. p. 13.

‘ agreed upon by the *lord protector and the council* (67).’ He printed an order for the continuance of the assessment for the pay of the army and navy, at the rate of 120,000*l.* a month (68). He invested himself, by his instrument of government, with the power of making laws and ordinances, which were to be binding until orders should be taken concerning the same in parliament (69). And not satisfied with taking away the power of the *representative* body of the people, he did what Charles durst never have attempted ; he took away from the *people* their right of choosing their own representatives, and sent warrants to particular men ‘ being ‘ persons nominated’ *by himself and his council of officers*, afterwards well known by the appellation of *Praise God Barebones’* parliament, ‘ to appear at the council chamber in ‘ Whitehall to take upon themselves the trust unto which ‘ they had been called and appointed,’ (that is, to receive Oliver’s commands) (70). Besides which, it is said by the author from whom I have made these extracts, who it is plain had no partiality to Charles I. that Cromwell ‘ made use of packed juries on some occasions, and displaced ‘ judges for refusing to follow his directions. He committed men illegally to prison, and permitted them not to enjoy the benefit of the laws. He caused men to be tried ‘ before new created tribunals, and adjudged to death without the verdict of a jury. These courts were styled high courts ‘ of justice, the terror of the royalists, as their enemies were ‘ their judges (71).’ If to all these things we add the edict, by which he deprived the episcopal clergy of the privilege of worshipping God after their own manner, ‘ in their own ‘ houses and families (72),’ we shall find, especially when we consider the authorities cited in support of this doctrine,

(67) HARRIS’S *Life of Cromwell*, p. 343.

(68) *Ibid.* p. 331.

(69) HARRIS’S *Life of Cromwell*, p. 343.

(70) *Ib.* p. 332. (71) *Ib.* p. 449. (72) *Ib.* p. 436.

good cause to justify the observation, that, ' during the protectorship, there was little or no liberty, political, civil, or religious.'

NOTE [FF], p. 205.

IF taxation affect the commodities which are of immediate necessity, it is the height of cruelty. Previous to all the laws of society, man had a right to subsist. And is he to lose that right by the establishment of laws? To sell the productions of the earth to the people at a dear rate, is to rob them of them: it is to attack the very principle of their existence, to take from them, by a tax, the natural means of preserving it. By extorting the subsistence of the needy, the state takes from him his strength with his food. It reduces the poor man to a state of beggary, and the working man to that of idleness; it makes the unfortunate man a rogue, that is, it brings the hungry man to the gallows through excess of misery (73).

NOTE [GG], p. 206.

IT is indisputably certain that the present magnitude of our national incumbrance is productive of the greatest inconveniencies. For, first, the enormous taxes that are raised upon the necessaries of life for the payment of the interest of the national debt, are a hurt both to trade and manufactures, by raising the price as well of the artificer's subsistence, as of the raw material; and of course, in a much greater proportion the price of the commodity itself. Secondly, if part of this debt be owing to foreigners, either they draw out of the kingdom annually a considerable quantity of specie for the interest; or else it is made an argument to grant them unreasonable privileges in order to

(73) JUSTAMOND'S Translation of Abbé REYNAL'S History of the Settlements and Trade in the East and West Indies, b. xix.

‘ induce them to reside here. Thirdly, if the whole be
 ‘ owing to subjects only, it is then charging the active and
 ‘ industrious subject, who pays his share of the taxes, to
 ‘ maintain the indolent and idle creditor who receives them.
 ‘ Lastly, and principally, it weakens the internal strength of
 ‘ a state, by anticipating those resources which should be re-
 ‘ served to defend it in case of necessity. The interest we
 ‘ now pay for our debts would be nearly sufficient to main-
 ‘ tain any war, that any national motives could require.
 ‘ And if our ancestors in king William’s time had annually
 ‘ paid, so long as their exigences lasted, even a less sum than
 ‘ we now annually raise upon their accounts, they would in
 ‘ time of war have borne no greater burdens, than they have
 ‘ bequeathed to, and settled upon their posterity in time of
 ‘ peace; and might have been eased the instant the exigence
 ‘ was over (74).’

Had this latter policy been adopted, what a mighty nation
 would England at this time have been ! By following the
 contrary practice, how contemptible it may become !

NOTE [HH], p. 206.

THE expence of the last war to England, I think it is
 observed, was an hundred millions. ‘ The whole ex-
 ‘ pence of the last war to France was 49,702,000*l.* of which
 ‘ 23,152,000*l.* consisted of money procured by the sale of
 ‘ taxes, by free-gifts and extra impositions during the war,
 ‘ which left behind them no debts; and 26,550,000*l.* consisted
 ‘ of loans, or money raised on perpetual annuities, life annui-
 ‘ ties, and lotteries (75). France added to their perpetual
 ‘ annuities only twelve millions sterling; whereas we added
 ‘ to these annuities near sixty millions (76). Time is

(74) BLACK. Com. b. i. c. 8. p. 328.

(75) DR. PRICE’S Addit. Observ. on Civil Liberty, p. 149.

(76) DR. PRICE’S Observ. on Civil Liberty, p. 78.

‘ sinking fast the debts of France. Of 3,111,000*l.* in annuities on the *Hotel de Ville*, at *Paris*, 1,777,000*l.* consisted, in 1774, of life annuities, which were falling fast by deaths at the rate of 71,000*l.* every year (77); while we lose sight of the capital in the interest, they carry their views chiefly to the reimbursement of the capital (78). In point of territory and number of inhabitants, the two countries bear no comparison. The number of inhabitants in France is twenty-six millions; in Britain it cannot exceed six or seven millions (79).

NOTE [II], p. 208.

THE king of France in this respect is not absolute. And even in Turkey, the sultan would not *dare* to augment the taxes: infomuch that it is remarked, ‘in moderate governments there is an indemnity for the weight of the taxes, which is liberty. In despotic countries there is an equivalent for liberty, which is the lightness of the taxes (80).’

NOTE [KK], p. 212.

IT is hoped that from this or any other expression, no one will think so ill of the writer of the present sheets, as to imagine he could have the wickedness to wish the people to make use of force. None but an incendiary can entertain any such idea; none who professes to be a friend to the king, to the people, to the constitution. Good government

(77) Dr. PRICE’s Addit. Observ. on Civil Liberty, p. 152.

(78) Ibid. p. 153.

(79) Ibid. p. 66. 154.

(80) Sp. L. b. xiii. c. 12. JUSTAMOND’s Transl. of Abbé RAYNAL’s, Hist. of the Settlem. and Trade in the E. and W. Indies, vol. iv. b. xix. p. 518. HUME’s Hist. Eng. vol. v. p. 459, 3d Append. De LOLME Const. Eng. b. ii. c. 20. p. 517.

will be as careful to give *power* to prevent violence and licentiousness, which tend to anarchy; as to give *liberty*, to prevent dejection and despair, which lead to tyranny. Force may be necessary to establish the opinion of a faction, but never the opinion of the people. A free constitution provides a much less dangerous, a much more effectual force, I mean the *force of argument*, in the liberty of the press. Different opinions being freely agitated, in moving from side to side, the truth is sifted out, and the substance of the argument obtained. Then the grievance being become manifest; if the people be fairly represented, to use Mr. De LOLME's expression once more, 'it is *impossible* but it must be redressed (81).' Then, if one set of representatives neglect or refuse to do their duty, there is a *force* in the people, which, by each person severally pronouncing only the name of the man he would choose to represent him, will sooner or later cause the evil to be remedied.

NOTE [LL], p. 212.

IT is a great advantage in the English government, that the debates of those whom the people trust to represent them, are open to the animadversion, praise, and censure of their constituents. It may, however, afford an entertainment to see what others have thought of this privilege.

MONTESQUIEU observes, that 'when the body of the nobles are to vote in an aristocracy, or in a democracy, the senate, as the business is then only to prevent intrigues, the suffrages cannot be too secret. Intriguing in a senate is dangerous; dangerous it is also in a body of nobles; but not so in the people, whose nature it is to act through passion (82).'

Sir William BLACKSTONE conceives that voting by ballot 'may be serviceable, to prevent intrigues and unconstitutional combinations: but it is impossible to be practised

(81) Const. Eng. b. ii. c. 14. p. 314. 4th edit.

(82) Sp. L. b. ii. c. 2.

‘ with us, at least in the house of commons, where every member’s conduct is subject to the future censure of his constituents, and therefore should be openly submitted to their inspection (83).’

On a bill which was moved in the house of peers, and miscarried, for electing the Scotch peers by ballot, many lords protested. ‘ The method of voting by ballot,’ say they, ‘ appears to us infinitely preferable on many accounts; for as it is well known there are several alliances among that body of nobility, many of the peers may be put under great difficulties, their alliances drawing them one way, and their opinion and inclination another way. It is also possible, that by pensions from the crown or by civil or military preferments, some of them may lie under obligations to a court, and be reduced to the hard necessity (under the power of an arbitrary minister) either of losing their employments, or of voting against their nearest relations, and their own opinion also. We apprehend that no election can be called perfectly free, where any number of the electors are under any influence whatsoever, by which they may be biased in the freedom of their choice (84).’

N O T E [MM], p. 223.

WHILE there were such men as Andrew Marvel, who constantly corresponded with his constituents, it might be reasonable that members of parliament should enjoy the privilege of sending and receiving letters free from the duty of postage; so long as the same was exercised in the service of the public, and not for any private emolument. The power of franking was formerly so general and easy, that the annual amount of franked letters had gradually increased from 23,600*l.* in the year 1715, to 170,700*l.* in the year

(83) BLACK. Com. h. i. c. 2. p. 180.

(84) BURGH’S Polit. Disquisit. vol. i. p. 178.

1763 (85). The statute however of 4 George III. c. 24. anno 1763, in some measure remedied the grievance by allowing, what indeed was rather favourable than disadvantageous to members of parliament, that only such letters or packets from or to members of parliament should be exempt from paying the duty of postage, as 'did not exceed the weight of two ounces, and were sent from and to any places in Great Britain and Ireland *during the sitting of any session of parliament, or within forty days before, or forty days after any summons or prorogation of the same*, which should be signed on the outside thereof by any member of either of the two houses of the parliament of Great Britain, and whereof the *whole superscription* should be of the hand writing of such member, or which should be directed to any member of either house of the parliament of Great Britain, or at *any of the places of his usual residence*, or at the place where he should actually be at the time of the delivery thereof, or at the house of parliament or the lobby of the house of parliament, of which he was a member.' Upon a like principle I suppose, that members of parliament should receive information of all public transactions at as cheap a rate as possible. The duty of postage, by a clause in this statute, was not to be charged upon 'printed newspapers being sent without covers, or in covers open at the sides, which should be directed to any member of parliament, at any place whereof he should have given notice in writing to the postmaster general.' Mr. LOCKE perhaps would think it 'contrary to the end of society and government,' for any member of parliament, merely because he is a member, 'to have a *distinct interest* from the rest of the community (86).' However, if he ought himself, upon what principle is it that he should have the privilege of conferring or refusing the favour to others? If it should be thought an advantage to the revenue, that

(85) BLACK. Com. b. i. c. 8. p. 322.

(86) LOCKE on Civ. Gov. b. ii. c. 12. f. 1.

newspapers should be sent free from the duty of postage, why should not the privilege be made general? If the legislature imagined that no member would give notice in writing of any place that newspapers should be sent to, which was not, as the act expresses, 'the place of his usual residence, or the place where he should actually be,' they might easily be satisfied how far they were warranted in this conjecture, by inquiring what notices have been sent by the several members of parliament to the postmaster general and his deputy at Edinburgh.

Another privilege, that of *person*, might be very reasonable in arbitrary times, when the personal safety of members of parliament was precarious, only by discharging their duty to the public. But when every man's liberty is effectually secured by the *Habeas Corpus* act, Mr. LOCKE, had he been alive, would perhaps have thought, the public good no longer required this peculiar advantage; that it was necessary to oblige the members of both houses to pay their debts in time (87); that as the superstition of ancient times had ceased, and certain consecrated places were no longer allowed to be sanctuaries for *criminals* (88); so, since every man is now intitled to a writ of *Habeas Corpus*, it ought not to be possible for *debtors* to find a place of sanctuary in the house of commons.

N. B. This note was written before the act was passed, requiring the members to superscribe on the letters they send, the name of the place from, and the day on which they are sent.

(87) Sp. L. b. v. c. 8.

(88) 27 Henry VIII. c. xix. 32 Henry VIII. c. xii. 21 James I. c. xxviii.

NOTE [NN], p. 229.

WHEN we reflect on those immense territories, which William the Conqueror took from his Saxon to give to his Norman subjects, it is no wonder that proprietors of lands were few. RAPIN mentions some remarkable instances of this disposition in that prince (89) : ‘ Robert, the Conqueror’s brother by the mother’s side,’ says he, ‘ had, for his share, the earldom of *Cornwall*, where he had 288 manors, besides 558 which he was in possession of in other counties. Odo, bishop of *Bayeux*, his other brother, was made earl palatine of *Kent*, and *high justiciary of England*. This prelate had 180 fiefs in *Kent* alone, and 255 in other places.’ [A knight’s fee was about 20 l. a year then; and when RAPIN wrote his History of England, he reckoned one equal to 4 or 500 l. a year (90)]. William Fitzosbern was rewarded with the whole earldom of *Hereford*. Hugh Lupus, the king’s sister’s son, was presented by his uncle with the county palatine of *Chester*, with all the royal prerogatives, to hold it with the same sovereign power as the king himself held his crown. Allan Fergeant, duke of *Bretaign*, the king’s son-in-law, had all earl *Morchar*’s estate, with the same privileges as were granted to the earl of *Chester*. Roger de Montgomerie had first *Arundel* and *Chichester*, and afterwards *Shropshire*. Walter Griffard had *Buckinghamshire*, and William Warren, the county of *Surry*. Eudes, earl of *Blois*, was put in the possession of the lordship of *Holderness*. Ralph de Guader, a *Bretaign*, was made earl of *Norfolk* and *Suffolk*, and lord of *Norwich*. Henry de Ferrers had given him *Tutbury Castle*. William, bishop of *Constance*, was possessed of 280 fiefs, which he left at his death to Robert Mowbray, his nephew. See some other instances enumerated in HUMPHREY’S Hist. of Eng. vol. ii. p. 113.

(89) RAP. Hist. Eng. Dissert. on Gov. vol. ii. p. 252.

(90) Ibid. vol. ii. p. 175.

N O T E [OO], p. 240.

IT seemeth, that those of the counties, whom we call *knights*, served not in ancient time for all the freeholders of the county, as at this day they do, but were only chosen in behalf of them that held of the king *in capite*, and were not *barones majores*, barons of the realm. For all freeholders, besides them, had their lord paramount (which held *in capite* to speak for them), and those only had nobody, for that themselves held immediately of the king. Therefore king John, by his charter, did agree to summon *them only*, and no other freeholders; howbeit, those other freeholders, because they could not always be certainly distinguished from them that held *in capite* (which increased daily), grew, by little and little, to have voices in election of the knights of the shire, and at last to be confirmed therein by statute 7 Hen. IV. (91).³

N O T E [PP], p. 245.

BY the statute of 7 & 8 William III. c. 32. §. 8. grand jurymen, at the assizes in Yorkshire, are to have 80 l. a-year freehold or copyhold; and by 4 & 5 W. & M. c. 24. §. 15. and 3 Geo. II. c. 25. common jurors are to have 10 l. a-year, freehold, copyhold, or ancient demesne, or in rents, or lands in their own right, of 20 l. a-year above the reserved rent on lease for 500 years or more, or for 99 years, or any other term, determinable on one or more lives.

N O T E [QQ], p. 255.

PERHAPS, indeed, it might not be possible in Cornwall, which sends so many members, and probably in some other places, to have so great a number of electors as

(91) SPELMAN'S Remains, p. 64. Dr. SQUIRE on the Anglo-Sax. Gov. p. 300.

NOTE [UU], p. 272.

THE archbishop of York, in a sermon preached before the Society for propagating the Gospel in Foreign Parts, Feb. 21, 1777, calls liberty 'a freedom from all restraints, except such as established law imposes for the good of the community (100).'

MONS. DE LOMÉ seems to think the essential difference between the government of England and an arbitrary government, consists in this, that in the latter *the authority of the sovereign and the civil magistrate* is unlimited in every case where there are no boundaries set up against it; but that in England, it is the *liberty of the subject*, which is unbounded, excepting in those cases where some express law has been made to restrain it (101).

NOTE [VV], p. 278.

THERE seems, however, to be one great defect in criminal prosecutions; that a man shall not have the same assistance to defend his life, which is allowed him in prosecutions for every petty trespass; I mean the assistance of counsel.

I know SIR EDWARD COKE says, 'The evidence to convict a prisoner should be so manifest, as it could not be contradicted (102).'

And, anciently, no witness was permitted to give evidence against the crown. But daily instances of the unreasonableness and oppression consequent on this doctrine, soon made the courts of justice heartily ashamed of it; and a practice was gradually introduced of examining witnesses for the prisoner, but not upon oath: the consequence of which still was, that the jury gave

(100) P. 19.

(101) DE LOMÉ, Conf. Eng. b. ii. second part of, c. xvii. p. 457.

(102) 3 Inst. 137.

less credit to the prisoner's evidence, than to that produced by the Crown. At length, however, by the statute of 7 W. III. c. 3. in certain cases of *treason*, the party arraigned was admitted to make his full defence, by witnesses examined upon oath: And by statute 1 Ann. st. 2. c. 9. in all cases of *treason* and *felony*, witnesses were to be heard upon oath for the prisoner, as well as against him.

The law, however, notwithstanding 'the liberty of every individual bears a proportion to the security given by the laws to the innocency of his conduct (103),' has not yet extended the like kind of humanity to persons accused of capital felonies, in respect of *counsel*. It is true, that in case a point of law should arise proper to be debated, the prisoner is *intitled* to counsel: and the law declares, that the court shall be counsel for him: and it is hoped they are generally careful enough to see that the proceedings are legal and strictly regular. Yet, supposing the judge to be ever so well-intentioned, it may be necessary to cross-examine the witnesses to many points, and to make numberless observations on their testimony, which it is impossible for a judge intuitively to think of; or the accused, in so awful a situation, either to recollect or explain. Sensible of this defect in the modern practice, the judges seldom scruple to allow a prisoner counsel to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact. But, still, is not this a subject of too much importance to be left to the good pleasure of any judge? Can it be reasonable, that no observations shall be made but what the wisdom and liberality of the court, or the fortitude of the prisoner, shall be able to dictate? Does not humanity, in this respect, call loudly for the interposition of the legislature? By the before-mentioned statute of 7 W. III. c. 3. persons *indicted* for such *high treason* as works a corruption of blood, or mis-

prison thereof, may make their full defence by counsel, not exceeding two, to be named by the prisoner, and assigned by the court or judge: and the like indulgence is also given by statute 20 Geo. II. c. 30. on parliamentary *impeachments for high treason*. What good reason, then, can be assigned why the same humanity should not be extended to persons under prosecution for other capital offences, as well as high treason? Surely, 'the power of judging, a power so terrible to mankind (104),' cannot be too carefully guarded against. The true rule ought to be, *that the evidence to convict a person of any capital crime, ought, by every possible means, both by counsel and witnesses, to be made so manifest that it could not be doubted*. According to Sir WILLIAM BLACKSTONE, the clemency here contended for, was actually permitted by the ancient law; 'for,' says he, 'the *Mirrouir* (105), having observed the necessity of counsel in civil suits, "who know how to forward and defend the cause by the rules of law and customs of the realm," immediately afterwards subjoins, "and more necessary are they for defence upon indictments and appeals of felony, than upon other venial causes." A doctrine, surely, grounded on just principles. It is better that ten guilty persons escape than one innocent suffer. See, on this subject, BLACKSTONE's Commentaries, book iv. chap. 27. p. 349. 353. where this improvement of the law is strongly recommended in nearly the terms above written. See also EDEN's Penal Law, c. xv. p. 154; and Note [CCC], *postea*.

NOTE. [WW], p. 282.

SIR HENRY SPELMAN (Gloss. in verb. *Judicium Dei*) asserts, as an undoubted truth, that, during the reigns of the first Norman princes, every edict of the king, issued with the consent of his privy council, had the full force of law. The Author of the *Mirrouir des Justices* complained, that

(104) Sp. L. b. xi. c. vi.

(105) Chap. 3. sect. 1.

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ordinances were only made by the king and his clerks, and by aliens and others, who dared not to contradict the king; but studied to please him; whence he concludes; laws were oftener dictated by will, than by right (106). Acts of parliament frequently run in the form of petitions: 'May it please your majesty, that it may be enacted, and be it enacted by the king's most excellent majesty, with the advice and consent, &c.' Crimes are charged in indictments to be against the peace, the crown, and dignity of the king only: as in feudal times, allegiance is sworn only to the prince (107). Very lately, the dean of St. Asaph was indicted for a seditious libel upon 'the king and his government.' And the baron de MONTESQUIEU observes, 'that the English nation, having been formerly subject to an arbitrary power, on many occasions preserves the style of it, in such a manner, as to let us frequently see upon the foundation of a free government, the form of an absolute monarchy (108).'

NOTE [XX], p. 283.

IN despotic governments the prince himself may be judge. But in monarchies this cannot be; the constitution, by such means, would be subverted, and the dependent, intermediate powers annihilated; all set forms of judgment would cease; fear would take possession of the people's minds, and paleness would spread itself over every countenance; the more confidence, honour, affection, and security is in the subject, the more widely extended is the power of the monarch (109).'

Should the same person that has legislative and executive, be, by his vizier, or his bashaws, as in some foreign coun-

(106) HUME's Hist. of Eng. vol. ii. p. 137. App. ii.

(107) BLACK. Com. b. i. c. 10. and b. iv. c. 23.

(108) Sp. L. b. xix. c. 27. (109) Ibid. b. vi. c. 5.

tries, or by his ministers of state, or justices of *oyer and terminer*, created and removable at his *pleasure*, also invested with judicial authority, all appearance of law would instantly vanish. The judge would think it needless to set boundaries to his own authority. Established rules would be laid aside; and an arbitrary will introduced. Instead of making justice the object of the judicial decisions, they would become only the engines of injustice and oppression. Court favour would procure the judge's determinations. Perhaps, again, the sentences of the courts of justice would be sold. Nothing but partiality, venality, and caprice would probably guide the public judgments.

NOTE [YY], p. 283.

THIS alone, according to Dr. PRICE, is slavery, not liberty. But I think he reckons this consent of the community to be necessary only to the making of laws, and not to the execution of them; that is, he conceives the consent of the community to be necessary only to the legislative, but not to the executive authority. If this were really his opinion, it is pity, that in his *Additional Observations on Civil Liberty*, written professedly to remove the misapprehensions which his former sentiments had occasioned, and which, without some explanation, might have a dangerous tendency, he did not more fully explain himself. Sensible that 'liberty is imperfectly defined, when it is said to be "a government by laws, and not by men," he tells us, that "if the laws are made by one man, or a junto of men in a state, and not by common consent, a government by them does not differ from slavery (110).' Sir WILLIAM BLACKSTONE, on the contrary, tells us, 'civil liberty, rightly understood, consists in protecting the rights of individuals, by the united force of society (111).' But is

(110) Dr. PRICE's *Observ. on Civ. Lib.* p. 7.

(111) BLACK. *Com. b. i. c. 7.* p. 251.

it not obvious, that civil liberty depends, neither upon that part of the legislative power composed of the people, nor upon the executive singly, but on the political liberty of both, and the political liberty of that other body, whose weight must restore the balance, in case either of these two scales of government should happen to preponderate? According to my apprehension, slavery, that is, political slavery, is established, when a right becomes established in any one man, or any set of men, to legislative (if there can be any legislative where there are no laws), executive, and judicial, that is, absolute power over the persons and property of others. And civil slavery will be experienced, whenever this right is unrighteously exercised (112). And whether this right be exercised by one man, by the grantees of the state, or by a lawless mob, the power is equally tyrannical. In the first case, a single person usurps despotic power; in the last (perhaps the two last), there is an anarchy among the tyrants, which would make it even desirable, as a lesser evil, that despotic power was usurped by a single person.

NOTE [ZZ], p. 285.

IF one might judge from ancient usage, or the form of the expression in the preamble to the statutes, one would imagine acts of parliament were made by *the king's most excellent majesty*, by the *advice* of the *lords spiritual and temporal*, with the *consent* of the *commons* assembled in parliament; but so much are things changed, is it not now in *fact*, the practice to have them made rather as here stated, by the *commons*, with the *assent* of the *other two branches*; first of the peers, and then of the prince?

(112) Sp. L. b. xv. c. 1.

NOTE [AAA], p. 293.

DR. PRICE (113) says, ‘ nothing is more the duty
 ‘ of the representatives of a nation than to keep a
 ‘ strict eye over the expenditure of the money granted for
 ‘ public services.’

Bills were formerly passed for appointing commissioners to take, state, and examine the public accounts. It is curious to see the progress of this kind of bills. Dr. PRICE, in his introduction (114) to two tracts on Civil Liberty, says, that ‘ the first bill for the purpose I have mentioned was
 ‘ passed in the time of the Commonwealth, and in the year
 ‘ 1653. It was called, “ An act for accounts, and for
 “ clearing off public debts, and discovering frauds and
 “ concealments.” Seven commissioners were named in it,
 ‘ and the necessary powers given them. In 1667, another
 ‘ act was passed for the same purpose; after which, I find
 ‘ no account of any such acts till the beginning of the reign
 ‘ of king William. At this time, complaints of mismanagement and embezzlements in the disposition of public
 ‘ money were become so prevalent, that the house of commons thought it necessary to enter into measures for effectually preventing them, by obliging all revenue officers to
 ‘ make up their accounts, and bringing defaulters to justice.

‘ With these views, six of the acts I have mentioned were
 ‘ passed between the years 1690 and 1701. Another was
 ‘ passed in the first of queen Anne; and three more in her
 ‘ four last years. In king William’s reign [to shew our
 ‘ increasing depravity] they were always passed by the
 ‘ house of commons *without a division*; in queen Anne’s
 ‘ reign *not one passed without a division*; in 1717, a motion
 ‘ for such an act was *rejected* without a division; and since
 ‘ 1717, only one motion [in 1742, after the resignation

(113) Addit. Obs. on Civ. Lib. p. 48.

(114) P. 16.

‘ of Sir Robert Walpole] has been made for such a bill, and
‘ it was rejected by a majority of 136 to 66.

‘ The preamble to these acts declares the reason of them
‘ to be, that “ the kingdom may be satisfied and truly in-
‘ formed, whether all the monies granted by parliament
‘ have been faithfully issued and applied to the end for
‘ which they had been given; and that all loyal subjects
‘ may be thereby encouraged more cheerfully to bear the
‘ burdens laid upon them.”

Since Dr. PRICE wrote his Observations, commissioners
have been appointed by act of parliament to examine, take,
and state the public accounts of the kingdom; and by their
Tenth Report, dated the first of July 1783, it appears,
that, after a default, so long as from the year 1765, the ex-
ecutor of the will of the late lord Holland, the paymaster-
general of the forces, at last, in Nov. 1781, pursuant to
the act of the 21st of his present majesty, paid into the ex-
chequer 232,515*l.* 4*s.* 8*d.*; and that, exclusive of two
articles not then decided, the public had still, at all events,
an undoubted right to the further sum of 94,736*l.* 6*s.* 10*d.*
from lord Holland’s representatives; that there was ‘ in
‘ the hands of all the regimental agents, taken collectively,
‘ and for which they were accountable, non-effective mo-
‘ ney, to the amount of 123,416*l.* 13*s.* 7½*d.* which the
‘ public had a right to expect from the office intrusted with
‘ the power, a speedy examination and adjustment of; that,
‘ under the head of issues for the extraordinary services of
‘ the army, between the year 1746, and the 6th of May
‘ 1783, 664 sub-accountants remained, at the day of sign-
‘ ing the Report, accountable to the public for the sum of
‘ 28,933,920*l.* 16*s.*; and of them, six persons only for
‘ the sum of 4,214,486*l.*; every one of whom, according
‘ to the present course of the exchequer, should pass his ac-
‘ counts of the whole sum he had received before the
‘ auditors of the imprest, or he could not have his quietus;
‘ and that all these lists of sub-accountants ought forthwith

‘ to undergo a scrutiny in the treasury, and in the office of
 ‘ the comptroller of the accounts of the army;’ and lastly,
 ‘ that the accounts which, at the day of making the Report,
 ‘ to wit, the first of July 1783, remained for the audit
 ‘ of the exchequer, were,

For the issues of 21 years for the <i>navy</i>	
service - - - - -	£ 74,000,000
For ditto of 18 years for the <i>army</i>	
service - - - - -	58,000,000
For money issued to sub-accountants, near	39,000,000

Together £ 171,000,000

‘ All which accounts ought to be passed. The public,’ say
 the commissioners, ‘ have a right and good cause to de-
 ‘ mand it.’

True patriots would surely not only institute an inquiry into these abuses, but cause them to be corrected; and establish such a system of management relating to the revenue, as to remove all complaint in future. Had we, in our contest with America, done as we ought in this respect, it would have been impossible, one would think, to have spent an hundred millions of money. Compared with this, to be ingenious in finding out new taxes, which, with some people, constitutes the character of an able financier, is but to be an adept in the art of tormenting. That man must certainly deserve more highly of his country, who, by a skilful arrangement of the business of the finances, under the superintendence of some responsible minister or officer, by keeping a watchful eye to all demands on the public treasure, by a careful dispensation of it for necessary purposes only, a critical examination into the expenditure after it has been issued, and by causing the public accounts to be regularly settled, shall prevent imposition, than the man who has the talent only to impose with dexterity.

This is one of the greatest *desiderata* of government: and it is hoped the commissioners of accounts, who have already
 merited

merited so highly of their country, will be able to chalk out some plan to procure it this blessing.

On former occasions, ‘ the Reports which the commissioners delivered to the parliaments, contained accounts of a waste of public money, arising from the rapacity of contractors, and many scandalous abuses and frauds in every part of the public service, which must shock every person not grown callous to all the feelings of honesty and honour. In consequence of these Reports, the house of commons addressed the throne, and remonstrated; several great men were accused, and brought to shame; some were dismissed from their places, and ordered to be prosecuted; some expelled, and some committed to the Tower (115).’

But it is hoped, that the present commissioners will be able to render still greater services to their country; that, not contented with punishing past offences, but wishing to prevent any in future, they will cause as happy a constitution and distribution to be made of the fiscal, as, in time, has been produced of the other powers of government, whether we look at the legislative, the executive, judicial, ecclesiastical, maritime, or military.

Something or other, however, is certainly necessary to be done, when, instead of giving a part of our property, ‘ in order to secure, or to have the agreeable enjoyment of the remainder (116),’ the whole almost is given; and the taxes are become so excessive, that numbers, unable to support themselves, ‘ under a pretence of travelling, or of health, are retiring from amongst us, and going in search of plenty even to the countries of slavery (117).’

(115) Dr. PRICE’s *Observ. on Civ. Lib. Introd.* p. 18. 8th edit.

(116) *Sp. L. b. xiii. c. 1.*

(117) *Ibid. b. xix. c. 27.*

NOTE [BBB], p. 300.

TO which message were added these words, viz. 'the free and quiet enjoyment of their *estates and fortunes*, 'the liberties of their *persons*, and the security of the true *religion*.' All which, well attended to, would certainly have secured, what is so enchanting to an Englishman, *liberty*, both civil and religious. But, unfortunately, it was not so much *liberty* that was wanted, as *power*. An object most manifest to those who reflect on the frequent repetitions of this message (118), the evasive answers constantly given to it (119), the nineteen famous, or rather infamous propositions made at last by the parliament (120), and lastly, the king's offer of a free and general pardon (121). And I am afraid, if we attentively examine the many disturbances which have arisen since that time, we shall generally find that most of them rest on the very same foundation.

It is indeed, as Mr. LOCKE (122) observes, the frailty of humanity to 'grasp at power;' and we cannot be too careful in guarding against so 'great a temptation.'

On a late occasion (the East India bill brought in by Mr. Fox), *power*, we are told, was avowedly the governing principle; or rather perhaps the sole object of the proceeding. The project was not indeed to increase the power of the crown, nor that of the company: it was, it seems, to increase the power of the parliament. But was this the real or ostensible object? Was it not in fact, rather to increase the power of a particular party? Should any one entertain a

(118) CLAR. Hist. Rebel. vol. i. p. 309. 314. 342. 351. 355. 362. 369. 394. 401. folio edit.

(119) Ibid. 309. 312. 343. 367. 433. 456. folio edit.

(120) A short abstract of some of the principal of these propositions is given in p. 86.

(121) CLAR. Hist. Rebel. b. v. p. 365, folio edit.

(122) On Civ. Gov. b. ii. c. 12. s. 1.

doubt on this head, let him look upon the principal features of the business, the precipitancy of the proceeding, the anxiety and uncommon pains taken to secure its success, and the asperity used towards those who opposed it. Something very uncommon was certainly intended by it. 'If,' as Mr. RAPIN's (123) observes, 'the public good had been the sole spring of the actions of those who promoted it, I doubt they would not have laboured with so much heat and passion.'

On examination, it seems that personal power will be found the great object of every part of the transaction. — In this pursuit it is curious to observe the windings and turnings of party. Voluntary (not forced) benevolences or contributions to the support of government, are constitutional while a man is in the ministry; but dismiss him, and he will instantly shew you they are very unlawful. The man, who, in a minority could talk of nothing but the voice of the people, shall, as soon as ever he becomes the major party, immediately change his language; discredit the most conclusive proofs of popular opinion, and declare the voice of the people can be collected no where but in parliament; assert, that it would be most unjustifiable, if not criminal, to appeal to the people, by dissolving the parliament; and when by a dissolution, both the people and the parliament are of one way of thinking, instead of continuing to reckon, as in former times, *vox populi vox Dei*; truly the people of England are maniacs, seized with 'popular phrensy.' *Out of office*, men shall oppose a noble lord with the greatest violence. To take *any part* of the property of the Americans by a tax without their own consent, expressed either in person or by representatives, would be the highest act of arbitrary power, joined with the noble lord in office, 'circumstances are altered' immediately; and arbitrarily to take away from a great company of merchants, all *power* over their *whole* pro-

(123) Hist. Eng. vol. xiv. p. 438.

party,

perty, not only territorial but commercial (a property secured by royal charter, granted near two hundred years ago, founded upon indisputable ancient prerogative, confirmed by many acts of the whole legislature), becomes perfectly constitutional.

Happily however for the company and the country, all this was well known. The debates in the lower house of parliament being carried on publicly, neither the actions of the members, the principles on which they were founded, nor the object they had in view, could be concealed.

With men, placed as a barrier to prevent any unconstitutional incroachment of power, to protect us as well from the anarchy attending democracy, as the tyranny of monarchy, private interest or ambition could not easily pass for public virtue. A pretended regard for the liberty and property of a foreign people, could not hinder them from seeing the tendency of measures, which, in the event, were inevitably to have destroyed their own. Under the mask of humanity, they were able to discover a deep laid scheme of ambition. They had wisdom to discern a material difference between transferring power, and only regulating its operation; between a total alteration of the nature of the government of the company, and regulations tending only to make the company principally to consider the end of their institution.

As judges and legislators, they well knew, that the civil rights, the liberty and property of merchants, both at home and abroad, and the true political interests of the company, would be best preserved by a political regulation, which should secure that *which* is the true object of a trading company, not dominion, but commerce, and, consequently, gain.

As legislators and guardians of the constitution of their own country, they could scarcely agree to an alteration in the nature of the government of the company, which was to injure the government of the nation. Knowing the behaviour of the decemvirs of ancient Rome, they could never conceive it constitutional (not even decent in men who
had

had made so great an outcry against the influence of the crown, to attempt) to vest in any ministry, or the friends of any ministry, a degree of patronage infinitely superior to that which our ancestors thought could be only safely and constitutionally confided to majesty; or, to use the words in a note to Mr. Burke's long representation, moved in the house of commons on the 14th June 1784, to vest in any ministry, or the friends of any ministry, 'an empire to which
' Great Britain is but a respectable province.'

N O T E [CCC], p. 307.

TH E plain English of which I suppose is, that the house of commons ought to appoint the ministers. But before we draw this conclusion, let us examine the premises.
' In arbitrary governments what is the constitution of the legislature, which constitutes the ministry?' I think it is before shewn, that a most respectable author has defined a despotic government to be 'that in which a single person, *without law*, and without rule, directs every thing by his *own will* and caprice (124).'

And, indeed, 'in those countries I can see nothing that the legislator is able to decree, or the magistrate to judge. As the lands belong to the prince, it follows, that there are scarce any civil laws concerning the property of lands. From the right the sovereign has to succeed to estates, it follows likewise that there are none relating to inheritances: The monopolies established by the prince for himself in some countries, render all sorts of commercial laws quite useless. The marriages which they usually contract with slave-slaves are the cause that there are scarce any civil laws relating to dowries, or to the particular advantage of married women. From the prodigious multitude of slaves it follows likewise, that there are very few who have any such thing as a will of their own, and of course are answer-

(124) Sp. L. b. ii. c. 1.

able

‘ continue them in custody *sine die*, was illegal, a notorious
 ‘ breach of the liberty of the people, setting up a dispensing
 ‘ power in the house of commons, which their fathers never
 ‘ pretended to; bidding defiance to the *Habeas Corpus* act,
 ‘ which was the bulwark of personal liberty, destructive of
 ‘ the laws, and destroying the trust reposed in them: the
 ‘ king at the same time, being obliged to ask leave to
 ‘ continue in custody the horrid assassins of his person.

‘ Committing to custody those gentlemen, who, at the
 ‘ command of the people, came in a peaceable way to put
 ‘ the members in mind of their duty, was illegal and in-
 ‘ jurious; destructive of the subjects liberty of petitioning
 ‘ for redress of grievances, which had, by all parliaments
 ‘ before those, been acknowledged to be their undoubted
 ‘ right.

‘ Addressing the king to *displace his friends upon bare sur-
 ‘ mises*, before legal trial, or any article proved, was illegal,
 ‘ and inverting the law, and making execution go before
 ‘ judgment, contrary to the true sense of the law, which
 ‘ esteemed every man a good man, till something appeared to
 ‘ the contrary.’

And claiming and declaring,

‘ That it was the undoubted *right* of the people of England,
 ‘ in case their representatives in parliament did not proceed
 ‘ according to their duty, and the people’s interest, to in-
 ‘ form them of their dislike, disown their actions, and direct
 ‘ them to such things as they should think fit, either by pe-
 ‘ tition, address, proposal, memorial, or other peaceable
 ‘ way.

‘ That the house of commons separately, and otherwise
 ‘ than by bill legally passed into an act, had no legal power
 ‘ to suspend or dispense with the laws of the land, any
 ‘ more than the king had by his prerogative.

‘ That the house of commons had no legal power to im-
 ‘ prison any person, or commit them to the custody of ser-
 ‘ jeants

‘jeants or otherwise (their own members excepted), but ought to address the king to cause any person on good grounds to be apprehended, which persons so apprehended, ought to have the benefit of the *Habeas Corpus* act, and be fairly brought to a trial by due course of law.’

Upon which the house of commons resolved (132),

‘That to assert, that the house of commons had no power of commitment, but of their own members, tended to the subversion of the constitution of the house of commons.’

N O T E [EEE], p. 314.

‘THE liberty of the press is so far from being injurious to the reputation of individuals (as some persons have complained), that it is, on the contrary, its surest guard. When there exists no means of communication with the public, every one is exposed, without defence, to the secret shafts of malignity and envy. The man in office loses his reputation, the merchant his credit, the private individual his character, without so much as knowing either who are his enemies, or which way they carry on their attacks. But when there exists a free press, an innocent man immediately brings the matter into open day, and crushes his adversaries at once, by a public challenge to lay before the public the grounds of their several imputations (133).’

But, as Serjeant Glynn said in the prosecution against Woodfall for publishing Junius’s letter to the king, ‘though to speak ill of individuals may be deserving of reprehension, yet the public acts of government ought to lie open to public examination; it is a service done to the state to canvass them freely (134).’

(132) Vol. iii. p. 188.

(133) De LOI ME Constitution. Eng. b. ii. c. 12. p. 302, 4th edit.

(134) Ibid. b. ii. c. 12. p. 299, 4th edit.

‘ A most advantageous privilege this, which, affording to every man a means of laying his complaints before the public, procures him almost a certainty of redress against any act of oppression that he may have been exposed to: and which leaving, moreover, to every subject a right to give his opinion on all public matters, and by thus influencing the sentiments of the nation, to influence those of the legislature itself (which is sooner or later obliged to pay a deference to them), procures to him a sort of legislative authority, of a much more efficacious and beneficial nature than any formal right he might enjoy of voting by a mere *yea* or *nay*, upon general propositions suddenly offered to him, and which he could have neither a share in framing, nor any opportunity of objecting to and modifying.

• A privilege which, by raising in the people a continual sense of their security, and affording them undoubted proofs that the government, whatever may be its form, is ultimately destined to insure the happiness of those who live under it, is both one of the greatest advantages of freedom, and its surest characteristic. The kind of security as to their persons and possessions, which subjects who are totally deprived of that privilege enjoy at particular times, under other governments, perhaps may entitle them to look upon themselves as the well-administered property of masters who rightly understand their own interests; but it is *the right of canvassing, without fear, the conduct of those who are placed at their head, which constitutes a free nation* (135).’

A privilege, we may add, which gives energy to that supplemental or rather fundamental power which is wisely lodged in the people at large; and which, bringing before its tribunal, those acts of the governing authority, legislative, executive, and judicial, which are out of the reach of any

(135) De Lolme *Constit. of Eng.* b. ii. 2d Part of Chap. xvii. p. 427, 4th edit.

subsisting

subsisting law, has well justified the observation of an elegant writer, that 'the people of this nation are rather confederates than fellow-subjects (136).'

It is worthy observation, it was in the days of ignorance, before the art of printing was known, that our laws and our religion appeared in the mysterious garb of foreign language.

NOTE [FFF], p. 333.

BY consenting to the statute of 16 Charles I. c. vii. anno 1640.

Having given the royal assent to this statute, it verified what is said by MONTESQUIEU, that if 'the legislative body had a right to prorogue itself, it might happen never to be prorogued, which would be extremely dangerous in case it should ever attempt to incroach on the executive power: that were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body was once corrupted, the evil would be past all remedy: and moreover, that as a body is supposed to have no will but when it is assembled, were it not to assemble unanimously, it would be impossible to determine which was really the legislative body, the part assembled, or the other; and that as there are seasons, some of which are more proper than others, for assembling the legislative body, it is fit that the executive power should regulate the time of convening, as well as the duration of those assemblies, according to the circumstances and exigencies of state known to itself (137).'

'In England,' says De LOLME, 'when the executive power became double, by the king allowing the parlia-

(136) Sp. L. b. xix. c. 27.

(137) Ib. d. b. xi. c. 6,

ment to have a perpetual and independent existence, a civil war almost immediately followed (138).'

NOTE [GGG], p. 343.

A PASSAGE in Lord CLARENDON's History of the Rebellion (139) will give some little idea of what passed relating to this very matter, in the reign of Charles I. 'The committee' [sent to the king by the parliament] 'desired to know "whether he did intend that both houses *should express* " *their* CONFIDENCE of the persons, to whose trust places " were to be committed; for that they were directed by " their instructions, that, if his majesty was pleased to assent " thereunto, and to nominate persons of quality to receive " the charge of them, that they should certify it to both " houses of parliament, that thereupon they might *express* " *their confidence* in those persons, or humbly desire his majesty to name others, none of which persons to be removed " during three years next ensuing, without just cause to be " approved by both houses; and if any should be so removed, " or die within that space, the persons to be put in their " places, to be such as the two houses should confide in." The king answered, " That he did *not* intend, that the " houses *should express their* CONFIDENCE of the persons to " whose trust those places should be committed, *but only that* " *they should have liberty, upon any just exception, to proceed* " *against such persons according to law, his majesty being resolved not to protect them against the public justice."* They " told him, " There could be no good and firm peace hoped " for, if there were not a cure found out for the fears and " jealousies; and they knew none sure, but this which they " had proposed." The king replied, " That he rather

(138) De LOLME Constit. of Eng. b. ii. c. 3. p. 222. Note 4th edit.

(139) B. vii. p. 170.

" expected

“ expected reasons grounded upon law, to have shewed him,
 “ by the law, that he had not that right he pretended; or
 “ that they had a right superior to his, in what was now in
 “ question; or that they would have shewed him some legal
 “ reason, why the persons trusted by him were *incapable* of
 “ such a trust, than that they would only have insisted upon
 “ fears and jealousies, of which as he knew no ground, so he
 “ must be ignorant of the cure. That the argument they
 “ used might extend to the *depriving him of, or at least*
 “ *sharing with him in all his just regal power;*” and then
 gave some reasons in support of his right.

“ The committee, however, neither offered to answer his
 “ majesty’s reasons, nor to oppose other reasons to weigh
 “ against them.”

Upon which Lord CLARENDON (140) makes this ob-
 servation: ‘ It is evident to all men where the difference
 ‘ now lay between them, being whether the king would re-
 ‘ serve the disposal of those offices and places of trust to him-
 ‘ self, which all kings had enjoyed, and was indeed a part of
 ‘ his regality, or whether he would be content with such a
 ‘ nomination as, being to pass, and depend upon their appro-
 ‘ bation, no man should ever be admitted to them, who was
 ‘ nominated by him.’

N O T E [HHH], p. 343.

IT is worthy of remark, that the house of commons, being
 called to assist the crown with their *advice*, soon claimed a
 right of *petitioning* the crown. And from *petitioners*, they
 grew into *assentors* and *legislators*. But it is trusted the mis-
 fortunes of Charles I. will teach us the danger which may
 arise to the community, if the house of commons, from
 claiming a right to *advise* the crown in the choice of ministers,
 or to *petition* for their removal, should ever presume to de-

(140) Hist. Rebel. b. vii. p. 170.

clare, that no man ought to exercise the function of a minister, who had not the *previous confidence* of that house; that is, if the house of commons should ever claim a right to assent to the acts of the *executive*, as well as to the acts of the *legislative* authority.

King Charles I. in his answer to the nineteen propositions sent to him by the parliament, told them, that in those things with which the law had intrusted him, he would *never decline to hearken to their advice*, [and did not his present majesty say the same thing to the late Parliament?] *and would always weigh their advice; yet he should look upon their advice, as advices, not as commands or impositions; upon them as his counsellors, not as his tutors and guardians; and upon himself as their king, and not as their pupil or ward* (141).

NOTE [III], p. 346.

DE LOLME, on the Constitution of England (142), says, ‘If at any time any dangerous changes were to take place in the English constitution, the pernicious tendency of which the people were not able at first to discover, restrictions on the liberty of the press, and on the power of juries, will give them the first information.’

Among men who have entertained a partiality for the republican form of government, one is apt to hear them quote the republic of Holland as a model of perfection. But to such men I would observe, neither the republic of Holland, nor the republic of Venice, enjoy that criterion of liberty, the liberty of the press. A strong proof that the constitution of neither of these celebrated republics is founded upon those true principles of genuine freedom, on which the constitution of England is built. And if one calls to mind the complaints that were made in Holland during our late contest

(141) RAP. Hist. Eng. vol. xi. b. xx. p. 544.

(142) B. ii. c. 19. p. 499, 4th edit.

with America, the tardiness of their naval preparations ; and, after the termination of hostilities, the slowness of negotiating a treaty of peace, one may perceive no less defect in the decision and force of their executive *power*, than in their *liberty*.

‘ Those Italian republics which boast the perpetuity of their government,’ says an author I have a pleasure in quoting, ‘ ought to boast of nothing but the perpetuity of their abuses ; nor indeed do they enjoy greater liberty (nor even greater power) than Rome did under the decemviri (143).’

But it is not to be wondered there is less liberty in the Italian republics, than in several monarchies, when it is considered, that there the three powers of government are united. ‘ Hence their government is obliged to have recourse to as violent methods for its support, as even that of the Turks ; witness the state-inquisitors (at Venice), and the lion’s mouth, into which every informer may at all hours throw his written accusations. What a situation must the poor subject be in under those republics ? The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their *general* determinations ; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their *particular* decisions.

‘ The whole power is here united in one body ; and though there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

‘ I allow, indeed, that the mere hereditary aristocracy of the Italian republics, does not answer exactly to the despotic power of the eastern princes. The number of magistrates sometimes softens the power of the magistracy ; the whole body of the nobles do not always concur in the same de-

(143) MONTESQUIEU on the Rise and Fall of the Roman Empire, c. viii. p. 114.

‘ signs; and different tribunals are erected, that temper each other. Thus, at Venice the legislative power is in the council, the executive in the *pregadi*, and the judiciary in the *quarantia*. But the mischief is, that these different tribunals are *composed of magistrates all belonging to the same body, which constitutes almost one and the same power* (144).’

NOTE [KKK], p. 363.

THE duke of RICHMOND, in his letter of the 5th Aug. 1783, to Lieut. Col. Sharman, uses these words: ‘ I wish to see the executive part of government revert to where the constitution has originally placed it, in the hands of the crown, to be carried on by its ministers; those ministers under the controul of parliament, and parliament under the controul of the people. I would not have parliament made, as it daily is, a party concerned in every act of state, whereby it becomes the executive, for which it is not calculated, and loses its superintending and controuling power, which is the main end of its institution; for when the two houses are previously pledged by addresses, votes, and resolutions, it becomes extremely difficult for them afterwards to censure measures in which they have been so deeply engaged by acts of their own.’

Even the Author of *Thoughts on the Cause of the Dissentions* (145) writes thus: ‘ in parliament the whole is executed from the beginning to the end. In parliament the power of obtaining the object that is aimed at, is *absolute*; and the *safety in the proceeding perfect*; no rules to confine, no *after-reckonings* to terrify. Parliament cannot, with any great propriety, punish others for things in which they themselves have been accomplices. Thus, the controul of parliament upon the executory power is lost, because parliament is made to partake in every considerable act of

(144) Sp. L. b. xi. c. 6. See Note [RRR].

(145) p. 70.

‘ government.

‘ government. *Impeachment, that great guardian of the purity of the constitution, is in danger of being lost, even to the idea of it.*’

Possibly this evil was meant to be attributed to ministerial influence; but mark the words in page 101. ‘ Is,’ this Author asks, ‘ government strengthened? It grows weaker and weaker. The popular torrent gains upon it every hour.’

But the disposition which has been the most openly avowed by the house of commons of late years, is, perhaps, contained in a late resolution: ‘ That it is the opinion of this house, that the continuance of the present ministers in power, after the resolution of this house, is an obstacle to a firm, efficient, extended, and united administration, which can alone save this country.’ The inference from which seems to be, that, constitutionally, *no minister ought to continue in power after a resolution of that house*; and yet, though not in direct terms, in effect, that *unanimity*, which is one of the attributes of royalty, ‘ can alone save this country.’

NOTE [LLL], p. 37i.

THIS is, perhaps, as strong a proof as can be given, how ‘ lightly esteemed (146)’ a seat in the house of commons was formerly. If it be true, that the right of election of knights of the shires, is a right *inherent in the freehold, and inseparable from it*, as was said by lord chief justice HOLT, in the case of *Asbby and White* (147); and if it be admitted too, that this right is also a *privilege*, it is surely a remarkable occurrence, that any king should be able, by his charter, to order the town of Kingston upon Hull, and certain villages, to be called, and to be a separate and independent county, and divest the *freeholders* of their inherent right of voting for members of parliament; that of the

(146) See p. 39, 40.

(147) Mich. 2 Ann. See also Note [NNN].

legality of this strong exercise of power there should never have been any complaint; and that the freeholders should have quietly acquiesced in this privation of their privileges for ages, and never claimed to exercise their ancient right of voting for the county at large.

NOTE [MMM], p. 373.

THESE persons, in feudal views, were looked upon only as *villeins*, parcels, as it were, of their lord's property, and of a condition too *vile* to enjoy any right in electing the members of the feudal councils (148). But although every exertion of the villein, corporeal and mental, and the goods of fortune it might procure, were the property of his lord; yet even in those days, when the goods of the villein were so much the lord's property, that he could maintain an action for their asportation, his *person* was not thought unworthy of the king's protection (in his courts); *vita et membra*, says BRACTON, *sunt in potestate* (or, as expressed in a Record, *pasch. 19. E. I. coram rege Rot. 36 North. in manu regis* (149).

NOTE [NNN], p. 377.

RAPIN tells us, that as every part of the kingdom, in the *Norman* times (when the feudal system was so prevalent), was within some *barony*, or some *borough*, every part of the kingdom was represented (150).

(148) DALRYMP. Feod. Prop. p. 261. RAP. Hist. Eng. vol. ii. p. 153. BLACK. Com. b. ii. c. 6. p. 95. Sed vide Lord LOUGHBOROUGH's Opinion in a Note in DOUGLAS, p. 698. See also HARGRAVE's Arguments in the Case of Somerset, the Negroe. BRADY, p. 206. STUART's Historical Dissert. on the Antiq. of the Eng. Const. p. 186.

(149) Co. LYTT. 127. B. EDEN's Pen. Law, p. 220.

(150) RAPIN's Dissert. on the Anglo-Sax. Gov. in vol. ii. of his Eng. Hist. p. 176. 8vo edit.

Sir H. SPELMAN gives it as his opinion, ‘ That in making laws of the kingdom the common people were not consulted with, but only the barons, and those which held *in capite*, who were then called in *concilium regni*; and the common people being, by way of *tenure*, under one or other of them, did then, by him that was their chief lord (as by their tribute or procurator, and as now by the knights of the shire), consent or differ in law-making, and are not therefore named in the title of any ancient laws (151).’

And in the famous case of Ashby and White (152), as reported by Lord RAYMOND (153), lord chief justice HOLT (whose opinion, three judges dissenting, was confirmed on a writ of error brought in the house of lords) declared, when he came to give judgment, that the right of voting for knights of shires, is ‘ *vested in, and inseparable from the freehold*;’—that citizens and burgesses depend on the same right as knights of shires, and *differ only as to the tenure*; the right and manner of their election being *on the same foundation*; and (adopting the words of the judges in the case of Dungannon) that, ‘ if the king grant to the inhabitants of Islington, to be a free borough, and that the burgesses of the same town may elect two burgesses to serve in parliament, such a grant of such privilege to burgesses *not incorporated*, is void, for the inhabitants have not capacity to take an inheritance.’

Are these opinions evidence that the right of voting was *personal*? Are they not rather a proof that *property* was the real foundation of the right in *all* places, boroughs, cities, corporations, and counties? And was it not reasonable? Do the grievances which are complained of, arise from any defective regulations in regard to the *person* or the *property* of the subject? Was it not therefore a natural piece of policy

(151) See Lord LYTTEL. Observations on this Passage in his Hist. of Henry II. vol. iii. p. 219.

(152) Mich. 2 Anne.

(153) Lord RAYMOND, vol. ii. p. 238.

in our ancestors, instead of establishing an universal right of suffrage in every person, that, as ‘ the inhabitants of a particular town are much better acquainted with its wants and interests, than with those of other places ; and are better judges of the capacity of their neighbours, than of that of the rest of their countrymen ; in every considerable place, a representative should be elected by the inhabitants (154) ?’

N O T E [000], p. 385.

THE following extracts from the author of *Legislative Rights*, are irrefragable arguments against a possibility of a free election in counties, under the present system of representation. ‘ The trial of the Worcester election cause by the committee of the house of commons, lasted for more than *three months*, and the committee sat seventy-two days of that time. The trial was at last abruptly closed, to the dissatisfaction of the losing party, before all the witnesses were examined. I had it lately from good authority, that, in the late contest for Worcester, one of the parties had paid 34,000 *l.* on account of the *election only* ; and that the expence of the *petition* (for which there was a subscription), when the whole should be discharged, would be about 10,000 *l.* more. The expence on both sides, then, must have been about 88,000 *l.* The circumstances also of the last election contest for the county of Leicester deserve our notice. Fifteen days were spent in taking the poll, although the number of freeholders is said to have been only four or five thousand; the sheriff, as well as each candidate, had a counsellor constantly employed in examining the voters : and the family writings of a great number of persons were, as I have been informed, exposed to the open scrutiny of these lawyers and the whole county, before their freeholds were admitted of. Besides which, it was reckoned that 25,000 *l.* a side was spent on the occasion.’ Such evils, I readily

agree with the author, 'want a remedy.' Instead of our boasted freedom, we here see, as in the rudest ages, the right of the strongest preserved in the highest vigour.

N O T E [PPP], p. 385.

MR. WYVILL, in his speech on the 19th of December 1782, tells us, that 'the answers from different parts of the kingdom, to the circular letter of the Yorkshire Association, with few exceptions, concurred in recommending a petition in general terms; and that the capital, and the counties of Suffex, Middlesex, and Huntingdon, advised that the proposal of instruction to the members should be postponed.' Was not this tacitly disapproving the propositions made by the Yorkshire Association? The petition might be reasonable, but surely the propositions were improper. Many persons who were consenting to the first, had great objections to the latter. And I believe numbers declined concurring in the measure, which they really approved, lest they should give any kind of countenance to other proceedings, which were at once so unconstitutional and so dangerous.

N O T E [QQQ], p. 402.

HOW far a jury have a *right* (now, their *power* is not doubted) of determining the law as well as fact, on a prosecution for a state libel, seems not yet clearly defined or understood.

According to the opinion of some men (to convey the idea in the same form of expression as is used in another part of this treatise), the *nature* of a publication, as explained by suitable averments and innuendos, if the sense be doubtful, being proved, its *principle* and *object* are inferences of *law* from the nature of the thing published, cognizable only by the court of King's-bench; while with others, as the principle and object of a publication may appear from the circumstances, or *facts*, which *may* be given in *evidence*, a jury only, ought to determine, as well the principle and object, as the nature of a publication.

To

To the uncertainty of knowing therefore with precision, what is matter of law determinable by the court, and what matter of fact to be left to a jury, perhaps we ought to refer all that obscurity and difficulty in which the subject appears to be involved.

But as this is a matter on which, as an ingenious writer expresses it, 'a very important diversity of opinion hath appeared in the minds of great and good men (155).' I shall forbear at present from any further consideration of it:

N O T E [RRR], p. 402.

AN exception should be made here of the manner of trying peers, or lords of parliament, great state offenders, and those persons who have committed offences in India. Of the institution concerning the latter, an ingenious defence has lately been made in *Thoughts on the East India Bill, by one of the People*. Nevertheless, it may perhaps be conceived, that 'there is no liberty, if the power of judging be not separated from the legislative; that, were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator (156);' that that can be no very excellent mode of jurisdiction to prevent abuse of power, which unites not only the judge and the jury, the legislative and the judicial powers, but takes the persons who may possibly be guilty of abuse, chiefly from those bodies one of whom is to inquire into, and the other to condemn such abuse.

It may be thought, perhaps, but an indifferent contrivance to preserve the *virtue* of the representatives of the people, or the virtue of the people themselves, to make those who ought to be only legislators, judges of crimes committed in a country, where it is the established mode of addressing superiors, to make them valuable presents.

(155) EDEN'S Penal Law, p. 170.

(156) Sp. L. b. xi. c. 6.

It must, however, be confessed, that the case is new, of a peculiar and extraordinary nature, attended with great difficulty, and improper for the decision of ordinary jurymen of 10*l.* a year freeholds: that something was necessary to be done: and as the members of the court are taken from different bodies, it is hoped the danger will not be so great as might otherwise have been apprehended; and that, when the matter comes to be fully considered, a better institution will be devised, with a better distribution of power.

But in some men's opinion, the late election contest for the City of Westminster has furnished a precedent for bringing together powers which ought to be kept separate, in a still more important branch of the Constitution than the judicial.

N O T E [SSS], p. 406.

IS it reasonable that a power, *uncontroulable* by their constituents, should be lodged in the members of the house of commons for seven years together, or, according to the calculation of chances, for half the term of a man's life?

With respect, indeed, to the nobility, the case is different. They are not now, as in feudal times, much considered as representing the tenants of their baronies, but rather as owners themselves of a large share of the property of the kingdom. An idea of dignity, wisdom, impartiality, and justice, being therefore annexed to their possessions; and their honours being territorial, their honours, like their territories, are hereditary.

‘ In a state there are always persons distinguished by their birth, riches, or honours: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty
 5 “ would

‘ would be their slavery, and they would have no interest
 ‘ in supporting it, as most of the popular resolutions would
 ‘ be against them. The share they have, therefore, in the
 ‘ legislature, ought to be proportioned to the other advantages they have in the state; which happens only when
 ‘ they form a body that have a right to put a stop to the
 ‘ enterprizes of the people, as the people have a right to
 ‘ put a stop to theirs.

‘ The body, therefore, of the nobility, ought to be hereditary. In the first place, it is so in its own nature; and
 ‘ in the next, there must be a considerable interest to preserve its privileges; privileges that, in themselves, are
 ‘ obnoxious to popular envy, and, of course, in a free state,
 ‘ are always in danger (157).’

N O T E [TTT], p. 409.

THE house of lords wisely proposed, that the time in which the parliament was not to be dissolved, should be limited, and not left indefinite; ‘ that it should not be dissolved within *two years*, except by consent of both houses.’ But it seems, ‘ it was not to be imagined, that members of
 ‘ parliament, who resided from their houses and conveniences,
 ‘ at great charge for the service of the public, would desire
 ‘ to continue longer together, than the necessity of that
 ‘ service should require (158).’

N O T E [UUU], p. 423.

SOCRATES used to say, that although no man undertakes a trade he has not learned, even the meanest; yet every one thinks himself sufficiently qualified for the hardest

(157) Sp. L. b. xi. c. 6.

(158) Lord CLAR. Hist. Rebel. b. iii. p. 205.

of all trades, that of government (159). And Sir WILLIAM BLACKSTONE thus expresses himself on the same subject; ‘ apprenticeships are held necessary to almost every art, commercial or mechanical; a long course of reading and study must form the divine, the physician, and the practical professor of the laws: but every man of superior fortune thinks himself *born* a legislator. Yet TULLY was of a different opinion: “ it is necessary,” says he (160), “ for a senator to be thoroughly acquainted with the constitution; and this, he declares, is a knowledge of the most extensive nature; a matter of *science*, of diligence, of reflection; without which no senator can possibly be fit for his office.” BLACK. Com. Introd. f. i. p. 9.

NOTE [VVV], p. 424.

‘ WERE the executive power to ordain the raising of public money, otherwise than by giving its consent, liberty would be at an end; because it would become legislative in the most important point of legislation (161).’

An union of the legislative and executive powers only, Sir WILLIAM BLACKSTONE seems to think, ‘ would be productive of tyranny (162).’ And indeed, whether we consider the form of the government which has been set up in America, as a theory, or the consequences which have resulted from it in practice, we are equally led to believe the colonists must have missed the mark widely, if they aimed at liberty. No less than a despotic state, surely, could have been guilty of the cruelty they have exercised in their proscriptions and confiscations.

(159) Letters on the Spirit of Patriotism, p. 18.

(160) De Leg. iii. 18.

(161) Sp. L. b. xi. c. 6.

(162) BLACK. Com. b. i. c. 2. p. 154. See Sp. L. b. xi. c. 6. quoted in Note, p. 291. No. 22.

In *despotic* states, where the principle of the government is fear, cruelty may possibly, sometimes, be justifiable; yet even there, great severity is commonly attended with great danger. In those governments, indeed, either the extreme of lenity, or of severity, is to be dreaded: the one raises a spirit of ambition, the other of revenge; equally incompatible with public tranquillity. Respecting the first, something has been said already; and with regard to the latter, 'it is a perpetual remark of the Chinese authors, that the more the severity of punishments was increased in their empire, the nearer they were to a revolution (163).'

'In all, or almost all the governments of *Europe*, it would be easy to prove, that punishments have increased or diminished, in proportion as those governments favoured or discouraged liberty (164).'

And we have best the authority, that, 'as soon as a *republic* has compassed the destruction of those who wanted to subvert it, there should soon be an end of examples, punishments, and even of rewards.

'Great punishments, and consequently great changes, cannot take place, without investing some citizens with too great a power. It is, therefore, more advisable in this case to exceed in lenity, than in severity; to banish but few, rather than many; and to leave them their estates, rather than to make a great number of confiscations. On the pretence of avenging the republic's cause, the avengers would establish tyranny. The business is not to destroy the rebel, but the rebellion (165).'

NOTE [WWW], p. 427.

DR. PRICE, at the end of his *Observations on Civil Liberty* (166), informs us, that 'in a committee of the American congress in June 1775, a declaration was

(163) Sp. L. b. vi. c. 9.

(164) Ibid.

(165) Ibid. b. xii. c. 18.

(166) Vol. i. p. 111. 5th edit.

“ drawn up, containing an offer to Great Britain, “ that
 “ the colonies would not only continue to grant extraor-
 “ dinary aids in time of war, but also, if allowed a free
 “ commerce, pay into the sinking fund such a sum an-
 “ nually for 100 years, as should be more than sufficient, in
 “ that time, if faithfully applied, to extinguish all the present
 “ debts of Britain. Or, provided this was not accepted,
 “ that, to remove the groundless jealousy of Britain, that
 “ the colonies aimed at independence, and an abolition of
 “ the navigation act, which, in truth, they had never in-
 “ tended; and also, to avoid all future disputes about the
 “ right of making that and other acts for regulating their
 “ commerce for the general benefit, they would enter into a
 “ covenant with Britain that *she should fully possess and ex-*
 “ *ercise that right for 100 years to come.*”

He adds, that “ though this resolution only offers the al-
 “ ternative of, either a free trade with extraordinary aids
 “ and an annual supply, or an exclusive trade confirmed
 “ and extended; yet there can be little reason to doubt,
 “ but that to avoid the calamities attending the contest,
 “ both would have been consented to; particularly if, on
 “ our part, such a revival of the laws of trade had been offer-
 “ ed, as was proposed in a plan which he mentions of Lord
 “ Shelburne.

“ But, it seems, the resolution was not entered in the
 “ minutes of the congress; a severe act of parliament hap-
 “ pening to arrive at that time, which determined them not
 “ to give the sum proposed in it.”

N O T E [XXX], p. 427.

“ IF this nation sends colonies abroad, it must rather be
 “ to extend its commerce than its dominion (167).”

This is certainly the true idea. Increase of dominion
 will bring no increase of liberty; but the advantages we

(167) Sp. L. b. xix. c. 27.

L 1 2

enjoy

enjoy may be much increased by commerce. Commerce may bring us additional blessings ; distant territorial dominions may weaken us, and take away those we already possess (168). Nature, which has marked out our boundaries, if we would attend to her precepts, has taught us this lesson ; and experience has strongly confirmed it. Commerce only ought to be the object of our distant connections ; and if force should be found necessary to support and preserve it, nature has so directed, that it should be used to acquire, not territorial dominions, but the dominion of the sea. This is the true empire which ought to be aimed at. Here we should employ our strength, and erect our forts and castles (169) ; for this form alliances : here only a foreign force can materially affect the main object of the English government ; that is, the liberty of enjoying in peace the good things which England affords, and the liberty of acquiring nature's gifts to other countries by commerce. But we should take care, that, in seeking after superfluities, we lose not the necessities of life ; and how formidable soever our force, it ought never to be exerted in an hostile manner, on trivial occasions.

* The life of governments is like that of a man. The latter has a right to kill in case of natural defence ; the former have a right to wage war for their own preservation.

* The right, therefore, of war is derived from necessity and strict justice. If those who direct the conscience or counsels of princes do not hold by this, all is undone.

* It is true, that among societies, the right of natural defence carries along with it, sometimes, the necessity of attacking ; as, for instance, when one nation sees that a longer peace will enable another to destroy her ; and

(168) See Ibid. b. viii. c. 16, 17, 18, 19, 20. b. ix. c. 6, 7, 8. and b. xix. c. 27.

(169) Sp. L. b. xiii. c. 17. and b. xix. c. 27.

* that

‘ that to attack that nation instantly, is the only way to prevent her own destruction. But if princes proceed on arbitrary principles of glory, conveniency, and utility, torrents of blood will overspread the earth (170).’

If rapine should be the object of the kings of the earth, what are they better than pirates and robbers? They have greater power, but does that give them greater right to do ill?

‘ Above all, let them not avail themselves of any such idle plea as the glory of the prince; his glory is nothing but pride; it is a passion, and not a legitimate right (171).’

The *ardent love of glory*, which is cried up so much by many authors, is, according to another writer, ‘ nothing more than an ardent desire of committing slaughter, in order to make afterwards a boast of it (172).’

Several writers, nevertheless, dazzled with the glare of military exploits, and the brilliancy with which some of them have been recorded, have fancied, as the last mentioned author observes, that ‘ the governments of Rome and Sparta are the only ones fit for us to imitate;’ not considering, that there is an essential difference between those governments and that of England. Sparta depended for her preservation on military glory: war, therefore, was the *object* of the government of Sparta. Increase of dominion was the *view* of Rome. But the *direct end* of the English constitution, as has before been observed, is LIBERTY (173).

What blood and treasure have been formerly wasted in Don Quixote schemes of preserving the balance of power in

(170) Ibid. b. x. c. 2.

(171) Sp. L. b. x. c. 2.

(172) De LOULME, Const. Eng. b. ii. c. 5. p. 242.

(173) Sp. L. b. xi. c. 5.

Europe; 'in securing the Dutch barrier, reducing the French monarchy, settling the Spanish succession, supporting the house of Austria, maintaining the liberties of the Germanic body, and other purposes (174)!' though it is manifest, that in order 'to preserve the principles of the established government in any country, the state must be supported in the extent it has acquired; that the spirit of the state will change in proportion as it contracts or extends its limits (175);' that 'the attempting to make conquests, ruined all the republics of Greece (176);' and 'that it is proved from the history of mankind, that to conquer, or be conquered, has, in effect; been generally the same (177).'

Can, therefore, any thing less than self-preservation justify England engaging in war? Every other pretence seems to be fallacious, and injurious both to the prince and the people. A faction, as in the reign of Charles I. may wish to embroil the king in difficulties, in order afterwards to take advantage of his distress: but if a king of England would wish to be easy and happy, he ought to lessen, and not increase, the burdens of his people. And the people themselves should consider, whether a war was ever yet concluded without additional taxes.

(174) BLACK. Com. b. i. c. 8. p. 326.

(175) Sp. L. b. viii. c. 20.

(176) JUSTAMOND'S Translat. of Abbé REYNAL'S, *Hist. of the Settlem. and Trade in the East and West Indies*, vol. iv. b. xix. p. 428.

(177) Dr. FERGUSON'S *Hist. of Civ. Society*, part iv. f. 5.

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